
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> ____ All Child Care Evaluator Manual Holders ____ All Residential Care Evaluator Manual Holders <u>X</u> All Evaluator Manual Holders	<u>Transmittal No.</u> 04RM-08
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Subject:REFERENCE MATERIAL – BACKGROUND CHECK PROCEDURES

Reason For Change:

To add instructions on transferring a criminal record clearance (Section 7-1100)
To expand Simplified Exemption (Section 7-1720) processing instructions
To clarify the criminal record exemption criteria for multiple convictions (Section 7-1735)
To correct a cross reference error (Section 7-1500)
To remove CBCB/BIRS letters from the Reference Material Section

Filing Instructions:

- X REMOVE – Page 1-2 of Background Check Procedures Table of Contents
Pages 7 through 26
Pages 35 through 38
Pages 81 through 171
- X INSERT – Page 1-2 of Background Check Procedures Table of Contents
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Pages 35 through 38 and Page 81
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Approved:*Original signed by B. Jordan**11/22/04*

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7-0000 CAREGIVER BACKGROUND CHECK BUREAU**7-0000**

The Caregiver Background Check Bureau of the Community Care Licensing Division was established in January of 1992, to meet the statutory requirements of Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871. Prior to January 1992, this function was performed by the Regional Offices.

The Caregiver Background Check Bureau:

- Reviews criminal record information and renders decisions on criminal record exemption requests for the Community Care Licensing Division licensed facilities and for the TrustLine Registry.
- Conducts presentations on the Caregiver Background Check Bureau's functions. Answers questions from the public, licensed providers and exemption applicants.

The information contained in this section of the Evaluator Manual Reference Material is of a general nature and augments the Policy and Procedures contained in the applicable regulations, i.e., General Requirements Section 80019, Foster Family Homes Section 87019, Family Child Care Section 102370, Residential Care Facilities for the Elderly Section 87219, Child Care Centers Section 101170, and Residential Care Facilities for the Chronically Ill Section 87819.

The Caregiver Background Check Bureau has taken steps to ensure that the information in this section is consistent with the applicable laws and regulations. If there is any apparent conflict, the law or regulation will prevail. If you have questions related to any of these general process descriptions, contact the Caregiver Background Check Bureau or Regional County Liaison for clarification.

7-1000 COUNTIES UNDER CONTRACT TO PROVIDE LICENSING SERVICES**7-1000**

All counties under contract to perform licensing functions, per Memorandum of Understanding and Agreements, are responsible for reviewing criminal record information, investigating relevant arrests and child abuse possible matches, and processing requests for exemptions consistent with this section of the Evaluator Manual and as prescribed in Evaluator Manual Section 1-0020, Licensing Responsibilities Performed by the Counties.

In most instances, statements which refer to the Caregiver Background Check Bureau and Community Care Licensing Division's Regional Offices are equally applicable to county licensing offices.

When there are differences between the handling of Community Care Licensing Division and county cases, specific instructions for the county will be included. References to Background Information Review Section (BIRS), Program Investigations and Program Investigators are not, however, applicable to counties.

7-1000 COUNTIES UNDER CONTRACT TO PROVIDE LICENSING SERVICES (Continued)**7-1000**

Program Investigators prepare certain cases for State Regional Offices but do not perform investigations for counties under contract with the California Department of Social Services.

These investigative responsibilities are assumed by the counties under contract. Any questions about how a case should be handled should be referred to the county liaison in the Program Office responsible for that county. All exemption approvals and denials for county licensing agencies must be approved by the Branch Chief, Program Manager or designee, as specified. When a statement refers to Exemption Manager or Unit Manager throughout this section, the county equivalent is the Program Manager or designee. When a statement refers to Branch Chief throughout this section, the county equivalent is two supervisory levels above the Program Manager or designee, as approved by the Department. The County Director of Child Welfare Services or his/her designee shall be responsible for the independent operation of the County's licensing program from the County's child welfare placement program. Documentation of all decisions, including those of the Bureau Chief or designee, shall be maintained in the appropriate facility file.

Caregiver Back Ground Check Bureau and Background Information Review Section sample letters are referenced throughout this section. County licensing agencies may use these letters; however, the counties must modify the letters to reflect the correct county addresses, contacts, phone numbers, and signature blocks and titles. In addition, the body of the letter must be modified to reflect the correct county contact, licensee information, and the appeal address. County licensing agencies use the appeal address of the Program Office which is responsible for that county. Anytime a letter is sent to the Licensee requiring that the individual be removed, a Confirmation of Removal Notice (LIC 300E) must be attached.

7-1010 QUARTERLY COUNTY EXEMPTION REPORT**7-1010**

County licensing offices must record and report all approved and denied exemptions using the Quarterly County Exemption Report (LIC 9210). The LIC 9210 is available on the California Department of Social Services website at <http://cld.ca.gov/docs/forms.htm>.

The report must be submitted on a quarterly basis as follows:

<u>Reporting Period</u>	<u>Report Due</u>
January through March	April 7
April through June	July 7
July through September	October 7
October through December	January 7

Separate LIC 9210's are required for Foster Family Homes and Family Child Care Homes. LIC 9210's must be submitted to the Program Office as follows:

Foster Family Homes

Send report to: Children's Residential Program Office
100 Corporate Point, Suite 350, M.S. 29-17
Culver City, CA 90230
Attn.: Manager of Statewide Foster Care Program

7-1010 QUARTERLY COUNTY EXEMPTION REPORT (Continued)**7-1010**

Send an additional copy to your local liaison.

Family Child Care Homes

Send report to: Child Care Program Office
744 P Street, M.S. 19-48
Sacramento, CA 95814
Attn: County Liaison

When completing the LIC 9210, the county should identify itself, the facility type (either Family Child Care Home or Foster Family Home), enter the County Liaison's name and phone number (if known), enter the year, and check the appropriate reporting period. Use the following guidelines when completing the LIC 9210:

Name of Subject: List the subject's name as it appears on the Department of Justice criminal record. It is not necessary to list all of the aliases as reflected on the rap sheet.

Facility Name: Enter the facility name as listed on the license.

Facility Number: Enter the facility number as listed on the license.

Soc. Sec. #: Enter the subject's social security number.

DOB: Enter the subject's date of birth

Reporting Source: Circle the appropriate reporting source, either Department of Justice or FBI.

*** Type of Exemption:** Using the legend at the bottom of the LIC 9210, identify the type of exemption processed. The types of exemptions are defined in Section 7-1700 of the Criminal Record Background Section in the Evaluator Manual.

Criminal Violation Code/Year of Conviction:

List all of the criminal violation codes for each conviction and year of conviction identified on the rap sheet. Include all convictions from the rap sheet.

****Association with Facility:** Using the Legend at the bottom of the LIC 9210, enter the subject's association with the facility.

7-1015 STATE REVIEW OF THE QUARTERLY COUNTY EXEMPTION REPORT 7-1015

Upon receipt of the LIC 9210 from each county, the program county liaisons will forward a copy to the Caregiver Background Check Bureau, Operations Support Section Manager, at M.S. 19-62, for review. The assigned Caregiver Background Check Bureau analyst will review the reports and will contact the program county liaison, when necessary, to discuss any issues. If necessary, the program county liaison will facilitate getting the county documents supporting the criminal record exemption decision to Caregiver Background Check Bureau for further analysis and review. The program county liaison will note on their copy of the LIC 9210, which cases were reviewed by Caregiver Background Check Bureau. Caregiver Background Check Bureau will follow up on any correction that is needed and will develop and coordinate any training with regard to the correct processing of the exemptions by county licensing staff, with the program county liaison. Caregiver Background Check Bureau will be responsible for conducting training and the program county liaison will coordinate and facilitate them.

The program county liaison will also review the LIC 9210 and contact the county if necessary. In addition to reviewing the LIC 9210 quarterly, the program county liaison will use the LIC 9210's during the on-site county licensing program review to pull a sample of exemption cases that were not previously reviewed by Caregiver Background Check Bureau (10 or 10 % which ever is greater) to review. The program county liaison will also use the sample to check on the accuracy of the LIC 9210's completed by the county.

7-1020 STATE REVIEW OF COUNTY EXEMPTION CASES 7-1020

The California Department of Social Services is authorized by a Memorandum of Understanding with specific counties to conduct periodic reviews of that county's processed criminal record exemptions. This review is necessary to ensure statewide consistency with criminal record clearance and exemption statutes, regulations and policies. The review is one mechanism for monitoring the application of these statutes. Counties must maintain and make available upon request, copies of all denied/approved exemptions. The periodic review of the county processed exemption cases will be conducted by the program county liaison.

7-1100 CRIMINAL RECORD CLEARANCE 7-1100

A criminal record clearance demonstrated by the absence of any criminal conviction, other than a minor traffic violation.

7-1100 CRIMINAL RECORD CLEARANCE (Continued)**7-1100**

Specific individuals identified by statute and licensing regulations, must submit fingerprints to the Department of Justice and the Federal Bureau of Investigation for the purpose of conducting a criminal background search. An individual who has been convicted of a crime, other than a minor traffic violation, cannot obtain a community care license, nor can they reside in or have contact with persons receiving care in a licensed facility unless granted a criminal record exemption by the licensing agency.

Health and Safety Code Section 1596.871(a) states that no fee shall be charged by the Department of Justice or the California State Department of Social Services for processing the fingerprints of adults associated with children's residential facilities with a capacity of six or fewer and all family child care homes regardless of the capacity. This exemption applies to the Federal Bureau of Investigation processing fees as well. (See Appendix Tab E for Fingerprint Processing Fees).

Facilities exempt from paying the Department of Justice and the Federal Bureau of Investigation fees are:

- Family Child Care Homes
- Small Family Homes
- Group Homes with a capacity of six or fewer
- Foster Family Homes
- Certified Family Homes (certified by Foster Family Agencies)

For Fiscal Years 2003 – 2004 and 2004 - 2005 these categories must pay the FBI processing fee.

Transferring a Clearance

Active criminal record clearances may be transferred from one state licensed facility to another by a license applicant or licensee. Clearances cannot be transferred from a state licensed facility to a county licensed facility or from county to state. If an individual has an active clearance, he/she should not be reprinted. Licensees or license applicants may contact their local CCLD Regional Office to verify the individual's status.

To request a clearance transfer, a licensee or license applicant must submit an LIC 9182, Criminal Record Clearance Transfer Request form to their Regional Office. Transfers to more than one facility may be requested on one form. Licensees/license applicants may attach a list of each facility number to which the individual is to be transferred.

All clearance transfer requests must be submitted to the Department before the individual, who is subject to the transfer, has client contact or the licensee will be in violation of the law and subject to a \$100 civil penalty. An individual need not wait for a confirmation of the transfer before he/she can begin work or be present in the facility.

7-1110 CRIMINAL RECORD STATEMENT (LIC 508) 7-1110

All license applicants, non-client adult residents, and employees associated with the facility at the time of application must have a criminal record clearance or a criminal record exemption (Evaluator Manual Section 7-1700, Exemption) prior to licensure. Subsequent to licensure, all persons having contact with or residing in a licensed facility must submit fingerprints to the Department of Justice and the Federal Bureau of Investigation and have a Department of Justice clearance or a criminal record exemption prior to initial presence in the facility. Because an individual may begin work or be present in a licensed facility before a response from the Federal Bureau of Investigation is received, individuals submitting fingerprints must sign a Criminal Record Statement (LIC 508). This statement requires the individual to disclose any prior convictions. The LIC 508 informs the licensee that they must contact their Licensing Program Analyst, inform the analyst that the individual disclosed convictions on the LIC 508, and send the analyst a copy of the individual's LIC 508. For TrustLine applicants, the criminal conviction/ child abuse disclosure box on the TrustLine application, may be used instead of the LIC 508.

If the individual discloses convictions, on the LIC 508, other than a minor traffic violation, the Regional Office must immediately forward a copy of the LIC 508 and any attached explanation or documentation to the Caregiver Background Check Bureau.

The Caregiver Background Check Bureau will maintain the LIC 508 and match it with a rap sheet when received. The convictions disclosed must be compared with the convictions on the individual's rap sheet. Discrepancies and omissions must be factored in to the exemption decision (see Evaluator Manual Section 7-1730).

In cases, where the individual discloses convictions on the LIC 508 and the convictions do not appear on his/her rap sheet or a clearance is received, the licensing agency must use the self disclosures in lieu of or in addition to the rap sheet. Treat the disclosure the same as a subsequent conviction (see Evaluator Manual Section 7-1820). The individual may be subject to removal (see Evaluator Manual Section 7-1815).

County licensing agencies conduct their own investigations and follow-up on LIC 508 disclosures. Licensing agencies should make sure that the latest revision date of the LIC 508 is available to and used by applicants and licensees. LIC 508s may be downloaded off the Internet and copied.

7-1200 NAME SEARCH**7-1200**

A name search is an alternate type of criminal history inquiry that is only conducted for individuals who have a medical problem and/or a disability that prevents them from providing clear fingerprints either manually or electronically.

The Department of Justice will conduct a criminal history inquiry based on available personal identifying data (name, social security number, date of birth etc.) if:

- An individual's fingerprints have been rejected twice and, if applicable, the individual has a cleared Child Abuse Central Index, or
- An individual submits fingerprints with a law enforcement agency verification that the individual is unable to provide legible prints and, if applicable, the individual has a cleared Child Abuse Central Index.

The Department of Justice will send the contributing agency a rap sheet if the name search revealed a conviction or arrest. If the name search does not reveal a conviction or arrest the Department of Justice will send a "Notification of No Criminal History" letter to the individual and to the contributing agency.

For State licensed facilities, the Caregiver Background Check Bureau will enter the clearance on the Licensing Information System.

The licensing agency will not receive subsequent arrest or conviction information for individuals issued a "clearance" based on a name search.

7-1300 FEDERAL BUREAU OF INVESTIGATION**7-1300**

The Health and Safety Code requires that all individuals, subject to a criminal record review, obtain a Federal Bureau of Investigation clearance in addition to the California clearance obtained through the Department of Justice.

The Statute allows the licensing agency to approve a license if all licensing requirements have been met and only the Federal Bureau of Investigation response is outstanding. However, if the individual discloses a conviction on the Criminal Record Statement (LIC 508), the person may not be licensed until all criminal background issues are resolved, including receipt and resolution of the Federal Bureau of Investigation check. If a facility is licensed based upon the Department of Justice clearance and no disclosures on the Criminal Record Statement, and later a Federal Bureau of Investigation rap sheet is received indicating an arrest(s), the licensing agency must investigate the underlying facts of the arrest as outlined in Section 7-1811, Investigating Arrest-Onlys. If the Federal Bureau of Investigation rap sheet contains a conviction, the licensing agency must process it as an initial or subsequent conviction as applicable (Section 7-1820, Convictions Subsequent to Clearance or an Exemption). Similarly, if an individual was allowed to work or be present in a facility because the individual received a Department of Justice Clearance and did not disclose any convictions on the Criminal Record Statement

(LIC 508) and later the Department receives a FBI rap sheet containing convictions, the licensing agency must process the exemption request as outlined in Evaluator Manual Section 7-1820 Convictions Subsequent to Clearance or an Exemption. Though the exemption request must be processed, the individual's failure to disclose his/her convictions must be factored into the exemption decision.

Children's residential facilities with a capacity of six or less and all family child care homes are exempt from the Federal Bureau of Investigation processing fee except during Fiscal Years 2003 – 2004 and 2004 - 2005.

7-1400 CHILD ABUSE CENTRAL INDEX

7-1400

Health and Safety Code Sections 1522.1 and 1596.877 require that the Child Abuse Central Index be checked prior to issuing a license to care for children or otherwise approving any individual to care for children. Individuals required to submit fingerprints for the purpose of a criminal background check for child care must also submit a Child Abuse Central Index form (LIC-198A for Community Care Licensing Division licensed facilities or LIC-198 for County licensed facilities) and the appropriate fee to the Department of Justice. The licensing agency may issue a criminal record exemption, prior to receipt of the Child Abuse Central Index clearance.

The Department of Justice will conduct a search of the Child Abuse Central Index and respond with one of the following:

1. "Possible match."
2. "Unable to confirm a match to any report on file"
3. "No match to any report on file entered as an applicant."

The Department of Justice response time for a Child Abuse Central Index check varies from three days to six to eight weeks.

If the Child Abuse Central Index check was submitted after January 1, 1999, the licensing agency will receive subsequent reports similar to the rap back service for fingerprint check requests. Child Abuse Central Index check requests submitted prior to January 1, 1999, are only a point in time check. Information regarding Child Abuse Central Index transfers is located in Section 7-1770.

Responses listed as 1) will be entered, on the Licensing Information System as "Pending Possible Match". Responses listed as 2) will be entered on the Licensing Information System as "No Match". Responses listed as 3) will be entered on the Licensing Information System as "Cleared-No Match". County licensing offices must categorize responses to their inquiries similarly.

For State licensed facilities, Pending Possible Matches are forwarded to the Bureau of Investigations. The Bureau of Investigations will notify the individual of the possible match in writing and conduct a preliminary investigation that includes identification,

7-1400 CHILD ABUSE CENTRAL INDEX (Continued)**7-1400**

confirmation and obtaining the initial investigation documents from the reporting child protective or law enforcement agency.

The Bureau of Investigations will clear cases where the underlying investigative facts do not support the allegation of abuse. Allegations of child abuse supported by the underlying facts are referred by the Bureau of Investigations to the Regional Office for further investigation. The Bureau of Investigations will send to the Regional Office a copy of the Department of Justice response (including the name of the reporting agency), any initial investigative documents and a transmittal sheet to be returned to the Bureau of Investigations upon completion of the investigation. The Regional Office **must** conduct the Child Abuse Central Index investigation consistent with Evaluator Manual Section 3-2710.

County licensing agencies **must** confirm identification (See Evaluator Manual Section 7-1410), notify the individual of the possible match in writing (BIRS 7c), obtain the initial investigation documents from the reporting child protective or law enforcement agency and conduct a field investigation consistent with Evaluator Manual Section 3-2710.

7-1410 CHILD ABUSE CENTRAL INDEX IDENTIFICATION**7-1410**

The most important aspect of the Child Abuse Central Index Check match investigation is assuring that the person applying to the licensing agency is the same person named on the Department of Justice notification. Positive identification is critical to protect the rights of the person named on the Child Abuse Central Index Check and may avoid wasting time on unnecessary investigations.

When a Child Abuse Central Index Check possible match is received by the licensing agency, the identity of the individual must be confirmed before initiating an investigation. After confirming the subject's identity, the licensing agency must notify the subject of the Child Abuse Central Index Check possible match and that the licensing agency is conducting an investigation for possible child abuse (BIRS 7c).

The notification may be mailed or given only to the subject and must include the name of the reporting agency and report information. The subject must be notified prior to the final investigative findings of the licensing agency. The subject is responsible for contacting the child protection agency to obtain a copy of the report. The licensee may only be told that the licensing agency is conducting a background investigation of a new employee.

7-1410 CHILD ABUSE CENTRAL INDEX IDENTIFICATION(Continued)**7-1410**

The following procedures should be completed when confirming the subject's identity:

1. Check all identifying information on the Child Abuse Central Index Check form and Department of Justice notification to ensure the individual seeking a Child Abuse Central Index clearance with the licensing agency is the person named on the Child Abuse Central Index. Verify the spelling of subject's name, date of birth, and social security number to determine whether the Child Abuse Central Index check and application information match.
2. Contact the reporting agency and involved law enforcement agency for any available reports. Compare any physically identifying information from these reports to the physical description of the individual seeking a Child Abuse Central Index Check clearance, such as:
 - Age
 - Weight
 - Race
 - Hair color
 - Eye and skin color
 - Birthmarks, tattoos, scars

If the identity of the subject is still questionable, contact the subject by telephone or in person. If the contact is by telephone, ensure you are speaking only to the subject named on the Child Abuse Central Index check possible match since the information is strictly confidential. Inform the person that the licensing agency received information from the Department of Justice and that you are giving them an opportunity to provide any information related to the alleged abuse. If the person says nothing, ask, "Have any child abuse reports ever been made against you?" If the person says no, give partial information such as, "Do you remember an incident investigated by _____ on approximately _____?" Identity is confirmed if the person admits something happened on the date indicated, even if the person does not agree with the allegations in the other agencies' report.

Once identification has been confirmed, conduct the investigation consistent with Evaluator Manual Section 3-2710.

7-1420 CHILD ABUSE CENTRAL INDEX FOLLOW-UP PROCEDURE**7-1420**

If eight weeks have passed and the Department of Justice has not responded to the Child Abuse Central Index request, the applicant/licensee may request a follow-up. The applicant/licensee must submit a second LIC-198A or LIC-198 and proof of payment (i.e., copy of a canceled check, bank statement reflecting that the check has cleared or proof from the company issuing the money order). The licensee must indicate on the top right-hand corner of the second request: "Follow-up, Initial Form Submitted on (specify date)." Follow-up requests are given priority by the Department of Justice if eight weeks have elapsed.

7-1500 CRIMINAL RECORD TRANSCRIPT (RAP SHEET)**7-1500**

A criminal record transcript (rap sheet) is a document provided by the Department of Justice or the Federal Bureau of Investigation in response to a request for a criminal record review by the submission of fingerprints. The licensing agency is responsible for reviewing the arrest and conviction information on the rap sheet and as self-disclosed on the Criminal Record Statement (LIC 508) or TrustLine self disclosure.

For initial inquiries, the rap sheet may contain:

- All convictions and their related arrests
- All arrests with pending dispositions verified within the last 30 days
- Arrest information only of specific, serious crimes. These specific crimes are listed in Evaluator Manual Section 7-2100.
- Warrants
- Non-retainable offenses (A non-retainable offense is a local ordinance infraction or a vehicle code violation).

Subsequent rap sheets may contain:

- All convictions and their related arrests
- Arrest information of all crimes (See Evaluator Manual Section 7-1810.).
- Warrants
- Non-retainable offenses (A non-retainable offense is a local ordinance infraction or a vehicle code violation).

For processing rap sheets with arrest only information, see Evaluator Manual Section 7-1811.

Certain rap sheets may include both a conviction and an open arrest. This could include a rap with a conviction for a lesser offense but an open serious arrest, a serious conviction and an open arrest for a lesser offense, or a conviction for a lesser offense and an open arrest for a lesser offense.

- **A Lesser Offense** is a crime that is not a non-exemptible crime or a crime that is not on the serious arrest list in Evaluator Manual Section 7-2100.
- **A Serious Arrest** is an arrest for a non-exemptible crime or an arrest for a crime on the serious arrest list in Evaluator Manual Section 7-2100.
- **A Serious Crime** is a non-exemptible crime or a crime that is listed in on the serious arrest list in Evaluator Manual Section 7-2100.

Any conviction and a serious arrest - refer case to Background Information Review Section for investigation only if an exemption is requested and hold exemption decision until investigation is concluded. County licensing agencies will investigate the arrest if an exemption is requested.

7-1500 CRIMINAL RECORD TRANSCRIPT (RAP SHEET) (Continued) 7-1500

Any conviction and an arrest for a lesser offense - process exemption and if subsequent arrest results in a conviction later, than take appropriate action.

The rap sheet may note multiple arrests for felonies or misdemeanors, yet not show any conviction or disposition information. Under these circumstances, a Judgment of Conviction or other evidence substantiating the disposition of the arrests, such as the individual's written statement, must be obtained by the licensing agency. (See Evaluator Manual Section 7-1811, Investigating Arrests-Only). The Department may not use the mere fact of a person's arrest to support an administrative action against the individual.

Based on policy and procedures approved by the Department of Justice, the licensing agency may discuss all convictions noted on the rap sheet with the subject. It is not necessary to obtain a Judgment of Conviction prior to this discussion. It is also permissible to show the rap sheet to the individual. The rap sheet of an employee shall not be shown to the licensee of the facility or spouse of the affected employee. Licensing staff shall not provide a copy of the rap sheet to the individual or the licensee of the facility. (See Evaluator Manual Section 7-2010, Confidentiality of Criminal History Information). If the person wants to obtain a copy of his or her rap sheet, the person should be directed to contact the Department of Justice.

7-1510 NON-EXEMPTIBLE CONVICTIONS - INITIAL 7-1510

An individual with a non-exemptible conviction(s) is not eligible to apply for a criminal record exemption. **See exception in Evaluator Manual Section 7-1515 Certificate of Rehabilitation.** If a license applicant, spouse or dependent family member who resides in the facility has a non-exemptible conviction, the license application must be denied.

The Regional Office or county licensing agency must inform the applicant of the license denial. The Caregiver Background Check Bureau will telephone the Regional Office and send a written notification (cbcb6.0) of receipt of a rap sheet with a non-exemptible conviction. The Regional Office and county licensing agency must use the cbcb6.0 Template Letter 1, found in the common library as a guide to draft a letter to the applicant. (County licensing agencies – see Evaluator Manual Section 7-1000 for letter modification instructions).

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within thirty (30) days. The response form tells the Caregiver Background Check Bureau if the applicant is appealing the denial. If the applicant appeals the denial, the Regional Office must send the Caregiver Background Check Bureau the appeal letter, a copy of the LIC 508 (if not previously sent) and a copy of the LIC 200 with the completed response form.

7-1510 NON-EXEMPTIBLE CONVICTIONS - INITIAL (Continued)**7-1510**

If the denial is based solely on the conviction of the non-exemptible offense, and the applicant appeals, the Caregiver Background Check Bureau or county licensing agency will prepare the Statement of Facts.

If a potential employee has a non-exemptible conviction, the Caregiver Background Check Bureau or the county licensing agency must send separate, concurrent letters (cbcb 6.1) to the licensee and the individual notifying them that the individual's crime is non-exemptible and that they may not work, reside or have contact with clients of any community care facility. (County licensing agencies – see Evaluator Manual Section 7-1000 for letter modification instructions).

Use the list in Evaluator Manual Section 7-2100 to determine if the individual's offense is considered non-exemptible. If the offense does not appear on the non-exemptible list, the individual has the right to apply for an exemption. See Evaluator Manual Section 7-1710 Exemption Requests.

Special consideration must be given to an individual convicted of indecent exposure (Penal Code Section 314.1). Specified at Penal Code, § 290(a)(2)(A). This crime is non-exemptible unless the court expressly orders that the person does **not** have to register as a sex offender. Before allowing an individual convicted of indecent exposure to be eligible for an exemption, the licensing agency must verify with the court issued an order that the he or she did not have to register as a sex offender.

7-1515 CERTIFICATE OF REHABILITATION – H & S Code 1522**7-1515**

An exemption may be granted for individuals convicted of specific violent felonies covered in Health and Safety Code Section 1522. All criteria for evaluation of individuals convicted of violent felonies should be followed for these individuals, including, approval by Branch Chief or county equivalent. This exception to the non-exemptible listing only applies if all of the following criteria are met:

- (a) The individual is associated with a facility covered under Health and Safety Code Section 1522; and
- (b) The individual was convicted of one or more of the following violent felonies as specified in paragraphs (1), (2), (7) or (8) of the Penal Code Section 667.5:
 - (i) Murder or voluntary Manslaughter;
 - (ii) Mayhem;
 - (iii) Any felony punishable by death or life in prison; or

7-1515 CERTIFICATE OF REHABILITATION – H & S Code 1522 (continued) 7-1515

(iv) Any felony in which the individual inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the individual uses a firearm which use has been charged and proved in Section 12022.5 or 12022.55.

(c) The individual has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, **or** if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

Additionally, if an individual has been convicted of second degree robbery and obtained a Certificate of Rehabilitation, he or she is eligible to request an exemption for any facility type covered under Health and Safety Code Section 1522. This limited exception to the list of non-exemptible crimes is a result of a Court Order issued on July 21, 2004, in the Glesmann v. Rita Saenz, Director of the Department of Social Services, et al. (San Francisco Superior Court Case Nos. CGC-02-403255 and CGC-02-407530) lawsuit.

Note: The Department has appealed the trial's court decision. Consequently, if the trial court's decision is overturned, this exception may be terminated.

An individual must provide a copy of the Certificate of Rehabilitation with a file stamp from the Superior Court. Before granting or denying an exemption under this section, legal counsel should be consulted.

An exemption granted under this section cannot be transferred to an RCFE, RCF-CI, any child care facility or to TrustLine Registry.

7-1520 FELONY CONVICTIONS - INITIAL**7-1520**

A felony is an entry on the rap sheet **identified** as such or identified by the imposed sentence – “punishable by state prison”. The licensing agency must send separate, concurrent letters (cbcb 2) to the licensee and the individual notifying them that the individual has a felony conviction and that they must request a criminal record exemption **In TrustLine cases, the TL-09 letter is sent to the applicant.** (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions).

7-1530 MISDEMEANOR CONVICTIONS - INITIAL**7-1530**

A misdemeanor conviction may be identified on the rap sheet as such or identified by the sentence, “punishable by jail or fine”. If the individual’s criminal history does not meet the simplified exemption criteria (See Evaluator Manual Section 7-1720) the licensee and the affected individual must be notified concurrently via separate letters (cbcb 2) that the individual has a conviction and that a criminal record exemption is required (See Evaluator Manual Sections 7-1720 through 7-1737 for information on exemptions). In TrustLine cases, the TL-09 letter is sent to the applicant. (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions).

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGEMENT**7-1540**

Diversion or Deferred Entry of Judgement is an opportunity afforded by the court to the individual to participate in a work program, educational program, or rehabilitative counseling to avoid a criminal conviction. If diversion or deferred entry of judgement is the only entry on the rap sheet, determine whether the program was successfully or unsuccessfully completed. Until the individual has successfully completed the program, the licensing agency has the authority to investigate and take appropriate action through an “arrest only” investigation. Since participation in a diversion program does not require an admission of or finding of guilt, obtain information relative to the arrest and participation in the diversion program.

The successful or unsuccessful completion of diversion is not always clearly indicated on the rap sheet. When diversion is “terminated” it can be either a successful or unsuccessful completion.

Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense. The licensing agency will not investigate successfully completed diversion.

A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of employment, benefit, license or certificate (Penal Code Section 1000.4(a)).

A. If diversion was successfully completed:

1. The licensing agency cannot consider the arrest or diversion information during the exemption decision process.
2. The person is no longer subject to investigation by the licensing agency.
3. If the facts underlying the arrest are known to the licensing agency and they indicate a risk of harm to clients in care, consult your assigned attorney regarding the use of the information to pursue a conduct inimical investigation.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGEMENT (Continued) 7-1540

- B. If diversion is still pending (not yet completed), the licensing agency may use and consider the arrest and the nature of participation in the diversion program as part of an arrest-only investigation.
- C. If diversion was terminated due to the person *not* successfully completing the program, the rap sheet should indicate “terminated, criminal proceeding reinstated.” In the case of unsuccessful completion, both the crime *and* the nature of the individual’s participation in the diversion program may be considered in the processing of the exemption request. A determination must be made whether the person was then convicted or if the charges are still pending.

Counties may seek the assistance of their Legal Consultant at the California Department of Social Services Legal Division for the application of diversion related entries on criminal history reports.

7-1550 PARDONS, SET-ASIDE/DISMISSED 7-1550
AND NOLO CONTENDERE PLEAS

The denial of an exemption cannot be based on the record of a criminal conviction that has been pardoned. Such a denial is not authorized by statute and is prohibited by law. If in doubt about the status of the conviction, call Legal.

However, convictions that have been set aside or dismissed per **Section 1203.4 or 1203.4a** of the Penal Code are still considered convictions for exemption processing purposes pursuant to these Penal Code Sections and the Health and Safety Code. When the court sets aside or dismisses convictions based on these Penal Code Sections it could mean for example, that the convicted individual has satisfactorily fulfilled the probation and has applied to the court to set aside/dismiss the plea and/or the verdict. It does not mean that the individual was never convicted of the crime.

Any conviction rendered as a result of a *nolo contendere* plea shall be considered a conviction and evaluated pursuant to standard policies and procedures.

7-1600 CALIFORNIA DEPARTMENT OF SOCIAL SERVICES 7-1600
CLEARANCES

For licensing purposes, statute provides that minor infractions and citations are convictions that do not require an exemption.

If an individual has been convicted of a minor infraction or a citation, or has been arrested for a lesser offense, and has not been granted an exemption, the individual may be granted a California Department of Social Services or county licensing agency clearance. Notification of a California Department of Social Services Clearance is sent to the licensee only. Send the CBCB 1. County licensing agencies see Evaluator Manual Section 7-1000 for modification instructions.

**7-1600 CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
CLEARANCES (continued)****7-1600**

- If a subsequent conviction is received for an individual who had previously been granted a California Department of Social Services or county licensing agency clearance, the conviction should be reviewed for an exemption according to existing procedures. An action to deny an exemption for a subsequent conviction will result in a reversal of the California Department of Social Services or county licensing agency clearance.

7-1700 EXEMPTION**7-1700**

Simply defined, an exemption is a Department authorized written document that “exempts” an individual from the requirement of having a criminal record clearance (Evaluator Manual Section 7-1100, Criminal Record Clearance).

An individual who has been convicted of a crime (other than a minor traffic violation) is disqualified from holding a license or being present in a licensed unless the individual is granted a criminal record exemption by the licensing agency.

An exemption may be granted if the individual presents the licensing agency with substantial and convincing evidence to support a reasonable belief that the person is of good character and is not a threat to the well being of clients.

Persons convicted of certain serious crimes specified in statute are not permitted to obtain an exemption. These convictions are non-exemptible (See Evaluator Manual Section 7-1510 Non-exemptible Convictions, and Evaluator Manual Section 7-2100 for Non-exemptible Crimes Listings). Individuals convicted of crimes that are not classified as non-exemptible have the right to apply for an exemption.

The following are the four types of exemption processes used by the Community Care Licensing Division:

Simplified Exemption - The simplified exemption process may be used for individual’s convicted of one non-violent misdemeanor that is over five years old. The simplified exemption process entails only an examination of the convicted person’s rap sheet. The simplified exemption does not include the involvement of the individual and/or licensee. (See Evaluator Manual Section 7-1720, Simplified Exemption).

Standard Exemption - The standard exemption process is used to evaluate all felony convictions and those misdemeanors that do not qualify for a simplified exemption. This process requires contacting the applicant/licensee and the affected individual concurrently to inform them that a criminal record clearance has not been obtained and that an exemption is required. If an exemption is desired, the applicant/licensee must request one in writing and submit the required documentation as specified in Evaluator Manual Section 7-1730, Standard Exemption.

7-1700 EXEMPTION (Continued)**7-1700**

Individual Exemption - If the licensee elects not to pursue an exemption on behalf of an affected individual and terminates the individual's employment, the affected individual may request an individual exemption on their own behalf. However, an individual associated with a Foster Family Agency may not apply for an individual exemption unless they are an employee of the Foster Family Agency, i.e., a social worker, office worker. An approved individual exemption is valid for two years without a facility association (except administrator certificate holders). A licensing agency may associate the individual to a facility upon receipt of a written request from the hiring licensee/applicant.

The request must be on a Criminal Record Exemption Transfer Request (LIC 9188). The decision to associate should be based upon the criteria governing transfer of an exemption, i.e., position responsibilities, type of clients. (See Evaluator Manual Section 7-1770 Exemptions Transfers).

Conditional Exemption - A conditional exemption places a restriction or condition on a standard exemption which limits client contact or restricts their role in some way, e.g., individual is not to dispense prescription medications to a client or not to transport clients (See Evaluator Manual Section 7-1731.1, Conditional Exemption).

7-1710 EXEMPTION REQUESTS**7-1710**

An exemption request is a written statement obtained from the applicant or licensee on behalf of the affected individual they have employed or from the individual on their own behalf requesting to be exempted from the statutory disqualification from obtaining a license, residing in or being employed in a licensed facility. An exemption request is required for all exemptions except a simplified exemption. An exemption request is not considered complete until all requested support documents have been submitted.

The Department may cease processing the exemption request and close the case if:

- The individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and
- The licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice.

The Department may deny the exemption request if:

- The individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and
- The licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice.

7-1720 SIMPLIFIED EXEMPTION**7-1720**

The simplified exemption process can only be used for approvals. The simplified exemption process is a review based only on the examination of the convicted person's rap sheet. This process is designed to expedite the exemption decision by the licensing agency. The licensing agency has discretion to require a criminal record exemption using the standard exemption process even if the conviction(s) meet the simplified exemption criteria. If there is any doubt, require use of the standard process. The simplified exemption review does not necessitate the involvement of either the individual or the licensee.

Use of the simplified process must be indicated on LIS or appropriate county licensing tracking systems. The licensing agency must notify the licensee of the approval by letter (cbcb 4.0 or 4.1). See Evaluator Manual Section 7-1740, Notification of the Exemption Decision. In TrustLine cases, the TL-35 letter is sent to the applicant. (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions). A simplified exemption process may be used when all Simplified Exemption Approval Criteria are met.

Simplified Exemption Approval Criteria:

- (A) The individual does not have a demonstrated pattern of criminal activity;
- (B) The individual has no more than one conviction;
- (C) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
- (D) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation or, if the probation was informal or unsupervised it has been at least five years since the date of conviction.

Examples of crimes that may qualify for a simplified exemption:

- ✓ Driving on a suspended license
- ✓ Perjury
- ✓ Welfare Fraud
- ✓ Drawing check on insufficient funds
- ✓ False identification to a police officer
- ✓ Petty Theft
- ✓ Unlawful assembly/picketing

Individuals with a single DUI conviction that is more than 5 years old may qualify for a simplified exemption. Check DMV records to determine if there have been other arrests or citations of concern. If there is no other record, a condition restricting the individual from transporting clients is not necessary, the case may be processed as a simplified exemption. DUIs that involve great bodily harm or multiple DUI convictions will require a standard exemption.

7-1720 SIMPLIFIED EXEMPTION (Continued)**7-1720**

The simplified exemption process can not be used in the following situations:

- If there is any conviction within the preceding five years. (If a violation involved Juvenile Court conviction while the person was under the age of 18 years, it cannot be used as a basis to deny an application or prohibit employment.)
- If there is any serious arrest within the last three years that meets the investigation criteria.
- If the individual has any felony or violent misdemeanor convictions.
- If the individual was convicted of a misdemeanor that appears benign but may involve threats or present a risk of violence. Examples are crimes such as annoying phone calls, trespassing, vandalism, indecent exposure, misdemeanor burglary, violation of court order, resisting arrest, fight/offensive words, disturbing the peace, burglary 2nd degree and prostitution /solicitation.
- Though not indicated, it appears that the crime is a felony based on the sentence. If during the standard exemption process it becomes evident that the crime was a misdemeanor and other simplified exemption criteria is met, you may revert to the simplified exemption process.
- The rap sheet indicates that the individual was initially charged with a felony, or a crime listed on the Serious Crime List or Non-Exemptible Crime List crime but the charge was reduced and the person was subsequently convicted of a misdemeanor.
- The individual is currently on supervised or formal probation.
- The individual already has an exemption for another conviction(s).

7-1730 STANDARD EXEMPTION**7-1730**

Upon receiving a rap sheet that contains a conviction, that does not meet the simplified exemption criteria, (Evaluator Manual Section 7-1720) the licensing agency must immediately notify the licensee and the affected individual with separate, concurrent letters indicating the need for an exemption (See Evaluator Manual Section 7-1730, Standard Exemption). The Health and Safety Code specifies that upon notification from the licensing agency, the licensee shall act to either (1) terminate the person's employment, remove the person from the facility; or (2) seek an exemption. (See Evaluator Manual Section 7-1710 Exemption Requests).

The standard exemption process requires the compilation and evaluation of relevant information that would support the approval or denial of an exemption request. A decision can only be made after all submitted documentation has been reviewed.

7-1730 STANDARD EXEMPTION (Continued)**7-1730**

To request an exemption the following items must be submitted:

1. A written request for an exemption from the licensee/applicant on behalf of the individual.
2. A detailed description of what the individual will be doing at the facility. A duty statement or job description will suffice if the licensee/license applicant submits one.
3. A written request for an exemption from the affected individual on his/her own behalf if the licensee chooses not to request an exemption and terminates the individual from employment because of the individual's criminal history.
4. A signed copy of the original Criminal Record Statement (LIC-508).
5. A written statement signed by the individual describing the events surrounding each conviction including the approximate date, what happened, why it happened, and any other information he/she feels is important about the crime. The individual must also describe what he/she has done since the conviction to ensure he/she will not be further involved in criminal activity.
6. Documentation (Minute Order, court issued Judgment of Conviction or a letter from the Probation Department) indicating that the individual's current or last period of probation was informal or that the formal probation was successfully completed.
7. Written verification of any training, classes, courses, treatment or counseling sessions completed.
8. Three signed character references including the telephone number and address of the person writing the reference. Character references must be current and cannot be from the individual's relatives or family members nor from employees or clients associated with the licensed facility. The character references must be on Reference Request form (LIC 301 E).
9. A copy of all police reports involving the crime(s) for which the individual was convicted, or a letter from law enforcement stating that a report no longer exists.
10. The individual's current mailing address and telephone number.

For documents the licensing agency may request, see Evaluator Manual Sections 7-1733 and 7-1734.

7-1731 EVALUATION OF STANDARD EXEMPTION**7-1731**

The licensing agency must evaluate each exemption request according to criteria contained in Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871 as well as Regulations Sections 80019.1, 87019.1, 87219.1, 87819.1, 101170.1 and 102370.1.

The decision to approve or deny an exemption must be based upon a comprehensive review of all available information, and the information specified in Evaluator Manual Section 7-1730, Standard Exemption.

To approve an exemption, the licensing agency must evaluate the possibility of potential risk or threat to clients in care. Factors such as lack of remorse, honesty, integrity or education, etc., are not automatic grounds for denial if there is other convincing evidence to grant an exemption. In all cases, the rationale for the decision must be thoroughly documented in writing in the exemption case file.

Use this step-by-step process to review a standard exemption request: (This process assumes that a standard exemption was requested and that all the information specified in Evaluator Manual Section 7-1730, Standard Exemption has been submitted).

Several factors must be considered in evaluating an exemption request. These factors are broken into 3 main categories:

1. THE CRIME
2. THE CLIENTS/FACILITY
3. REHABILITATION

1. THE CRIME

See also:

Type of Crime (Evaluator Manual Section 7-1732)

Nature of Crimes (Evaluator Manual Section 7-1733).

Carefully review the rap sheet and all police/arrest reports available. Licensing regulations and CBCB exemption request letters require that individuals who are seeking exemptions provide a copy of the specific police report(s) for all convictions. If the report has been purged, they must submit a statement from the law enforcement jurisdiction stating that the report is not available. For non violent crimes, the analyst may use the report to assess the accuracy of the information in the applicant's statement. However, an exemption should not be denied solely because the report is not available or not submitted.

7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)

7-1731

- Was the individual convicted of one or more violent crimes? Evaluate the severity of violence.

For crimes with an element of violence, submission of the police reports will be of particular importance. If the report is not submitted, the exemption decision should be based on the time period in the regulations for violent crimes. In extraordinary cases, if there is substantial evidence of rehabilitation, and there is documentation that the report is unavailable, the analyst should consult with the unit manager before deciding to approve the exemption. If the manager concurs that there is sufficient evidence of rehabilitation to proceed with a recommendation to approve the exemption, the case should be discussed with the CBCB Legal consultant. **In all cases involving violence, if there is a decision to approve an exemption, the case must be discussed with the CBCB Legal consultant prior to approval.**

- Are the convictions recent? How long ago? (See Evaluator Manual Section 7-1741 Exemption Decision Guidelines).
- Is there a pattern of repeat violations? If an individual meets the timeframes outlined in the criteria and is eligible for an exemption, review the pattern of offenses and the time lapsed between convictions. Individuals with convictions for a series of similar crimes must show a significant effort to change their behavior.
- Do the individual's convictions demonstrate a pattern which may be detrimental to the clients in the facility?
- Does the individual have multiple convictions not addressed in the exemption criteria such as a misdemeanor/felony combination? If so, consider the whole record. Any time there is a misdemeanor/felony combination, use the felony criteria.
- Was there a victim? If the crimes were the crimes victimless, was there potential danger?
- What age was the individual when the crimes were committed?
- Was there impaired judgment?
- Was there a violation of trust? If there was a victim, was the victim a dependent individual - the type of individual cared for in a community care facility such as a child, an elderly person or a developmentally disabled person?
- If it can be determined from the rap sheet that an individual received two or more convictions for lesser offenses from a single criminal act, consider this a single conviction and apply the Exemption Decision Criteria for individuals with a single conviction.

7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)

7-1731

- Determine the status of outstanding warrants on a rap sheet. If the rap sheet contains an arrest without a disposition, see Evaluator Manual Section 7-1500. If there are open arrests identified on the rap sheet without disposition, the analyst should consult with BIRS to follow-up on the status and circumstances of the arrest(s). If it is determined that there is an arrest which is still pending disposition, the analyst should return the case to the licensee indicating that the exemption can not be processed until the current arrest is resolved. Do not issue an exemption to an individual with an outstanding warrant. TrustLine cases may be closed using the TL- 10 or TL- 10.1 letter.

2. REHABILITATION

Is there compelling evidence to support rehabilitation? What has the individual done since their last conviction to demonstrate rehabilitation and "good character?"

- Has the individual been employed?
- Has the individual participated in or completed therapy, i.e., substance abuse counseling, domestic violence counseling, Alcoholics Anonymous, Narcotics Anonymous, etc.? Was counseling or therapy court ordered or voluntary?
- Has the individual pursued education or performed community activities.
- Does the individual possess a Governor's Pardon? If yes, the conviction(s) specified on the pardon does not require an exemption. A copy of the pardon should be reviewed to ensure that it covers all convictions for the individual. If the pardon does not include all convictions, an exemption for the remaining convictions is still required.
- Does the individual possess a Certificate of Rehabilitation? Please see Evaluator Manual Section 7-1550.
- Has the individual been honest in his/her interviews and conversations with the Department?
- Did the individual's written statement or Criminal Record Statement (LIC 508) accurately reveal their criminal history?

Has the individual honestly revealed the circumstances surrounding the commission of the crime?

Does the individual's explanation support or contradict the arresting officer's report?

7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)

7-1731

Has the individual accepted responsibility and demonstrated remorse for their convictions?

Evidence may include, but is not limited to comments on the Criminal Record Statement (LIC 508 or TLR-DS, Criminal Record Statement). Failure to provide a truthful statement on the LIC 508 or TLR may be grounds for exemption denial.

Before denying a case solely on this basis, attempt to determine if the individual reasonably forgot or misunderstood the circumstances or events. For example, if the individual reveals the most serious crimes, but neglects to reveal one or more convictions for lesser offenses, the exemption analyst should not assume that the individual is being dishonest. This is particularly true if the exemption decision would not have changed with consideration of the undisclosed convictions.

Obvious attempts to hide a criminal history, however, particularly when it involves denying the existence of recent conviction history, can and should form a basis for an exemption denial.

- Did the individual successfully complete probation or parole?

Is the parole or probation officer willing to make a recommendation?

Is the probation formal or informal? In cases where the individual was placed on informal or unsupervised probation, the exemption analyst should apply other criteria in determining rehabilitation, but should not deny the exemption solely based on the probation and parole requirements as listed in the regulations. See Evaluator Manual Section 7-1735 for more information on formal/informal probation.

- Was the individual required to make restitution? What is the restitution status?
- Carefully read the character references:

Character references must be on LIC 301E and must be complete and legible.

Consider the source of the character reference. A character reference from a relative, employee, client of the facility or the licensee is not acceptable.

Contact character references to substantiate any questionable references.

Cloned character references may be questioned and may delay the exemption decision.

7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)

7-1731

Failure to submit character reference letters may result in an exemption denial. The exemption analyst has discretion, however, to approve an exemption when the applicant submits fewer than three character reference letters provided sufficient evidence of rehabilitation exists.

- Contact the individual if you have any questions or need for additional information.

Keep a written record of all conversations.

Ask the individual to provide any missing information.

3. THE CLIENTS/FACILITY

Carefully review the convictions while considering the following:

- The role and responsibilities of the individual and the individual's position or relationship to the facility, i.e., licensee, spouse, employee.
- The individual's sphere of influence at the facility and potential opportunity to harm clients. Do the convictions warrant special consideration given the relationship of the individual to the clients?
- The type of crime in relation to the client population.

For example, an individual with a recent DUI conviction or a history of drug convictions would not be suitable for transporting clients or dispensing medications. An individual with theft related convictions would not be suitable for providing care to elderly adults with vulnerable private property.

- The type of crime in relation to the facility type.

For example, an individual with convictions for fiduciary abuse of their elderly relatives may be a real concern if he/she is applying for a license to care for the elderly. The same convictions for an employee of a child care facility may not raise the same concerns. An individual with convictions for contributing to the delinquency of minors would be a concern if he/she planned on working in or operating a group home. The same convictions for a person operating or working in an elderly facility may not be an issue.

7-1731.1 CONDITIONAL EXEMPTION**7-1731.1**

When an individual meets all other exemption approval criteria, but there are concerns about their ability to provide care to a specific client group or perform certain job duties, the exemption analyst may recommend approval of the exemption with conditions.

Example 1

It is common that alcohol or drug treatment facilities employ individuals with substance abuse convictions. Some employees were previous residents who have progressed into counselor positions. In these cases, if the individual provides evidence of rehabilitation, but the required time since conviction or end of probation has not lapsed, a Conditional Exemption for the individual to work in that specific facility only may be considered.

Example 2

If an individual has a single DUI conviction, a conditional exemption that limits the individual to jobs that do not involve driving might be appropriate depending on the amount of time passed since the conviction. The exemption should include these conditions whether or not the individual's job description states that he/she will be driving.

All conditional exemptions must be approved by an exemption manager or designee or county licensing equivalent.

CBCB conditional exemption letters are the cbc 4.01, cbc 4.11, and cbc 21.1. The CBC system must also be updated to reflect the conditional exemption. List the specific conditions in the comments section. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

Prior to granting a conditional exemption, the licensing agency must contact the licensee to discuss the parameters of the conditional approval and obtain their agreement with the terms. The licensee/individual may appeal the restriction or terms of conditional approval. (See Evaluator Manual Section 7-1760, Appeal of the Exemption Decision).

7-1732 TYPE OF CRIME**7-1732**

Check the action section of the rap sheet (right hand column) to determine whether a conviction was a misdemeanor or felony. If still in doubt, check the appropriate code book (e.g., Penal Code, Health and Safety Code, etc.) to determine the sentence that can be given. If it is for confinement in state prison, the individual was convicted of a felony. If the individual was sentenced to the county jail with no probation, it is likely the person was convicted of a misdemeanor. If the probation is longer than three years, the person may have been convicted of a felony.

7-1732 TYPE OF CRIME (Continued)**7-1732**

It is possible that an individual could have been charged initially with a serious felony offense, but he/she could have been subsequently convicted of a lesser crime.

For example, a person may have been initially charged with attempted murder and subsequently pled guilty and was convicted of an assault charge. The licensing agency may take action (application denial, revocation, temporary suspension, temporary restraining order, or exclusion) based upon conviction or arrest (conduct inimical) information. However, a decision to deny an exemption must be based on conviction information only. (See Evaluator Manual Enforcement Actions, Administrative Actions Section 1-1000)

Review each conviction closely. Confirm that the individual was not convicted of a non-exemptible crime. An individual convicted of a non-exemptible crime may not be considered for an exemption. It may be difficult to determine whether a conviction is non-exemptible because of a changed or repealed Penal Code number. If this is the case, counties must contact their county liaison or their Legal Consultant at the California Department of Social Services Legal Division for clarification. In addition, consider ordering a Judgment of Conviction.

7-1733 NATURE OF CRIMES**7-1733**

Compare the Penal Code number for each conviction and arrest in the action column (or disposition column on older rap sheets) with the corresponding number in the appropriate code book to determine the nature of the charges that was made.

Crimes can be categorized as:

- Against property (e.g., disturbing the peace, fraud, etc.)
- Against persons (e.g., assault and battery, rape, molestation, etc.)
- Victimless (e.g., driving without a license, Section 12500(a) Vehicle Code), or
- Resulting from impaired judgment (e.g., driving under the influence of alcohol or drugs).

Crimes that result in harm to another individual are to be regarded as more serious than crimes that primarily involve property. In addition, special attention should be paid to crimes that involve harm to a dependent individual, such as a child.

The regulations state that it should be presumed that an individual convicted of a violent felony is not of such good character as to justify the issuance of an exemption. However, this is a rebuttable presumption because an exemption may be granted if the individual presents compelling evidence of rehabilitation.

7-1733 NATURE OF CRIMES (Continued)

7-1733

Any exemption request for felony conviction that appears to indicate that the convicted individual engaged in violent conduct, based upon the nature of the crime or the underlying police report, should be carefully scrutinized. When there is substantial evidence of rehabilitation and there has been significant time since the conviction or end of supervised probation the exemption may be considered. Consult with an exemption manager and legal.

REMEMBER All exemptions for violent felony convictions must be approved by Branch Chief or county equivalent. Exemptions involving all other felonies must have a second level manager or supervisor approval.

Certain misdemeanors may also contain elements of violence, that may be identified either from the nature of the criminal offense itself, or through a review of the crime report. These convictions should also be carefully scrutinized.

Actual rehabilitation time periods for any violent crime conviction may vary depending on an evaluation of factors identified below:

- The nature and severity of violence:

Cases in which the 'violent' crime conviction resulted in bodily injury to another person should be closely scrutinized, and there should be sufficient time to establish that there is not a likelihood that the violent action may occur again.

If the 'violent' crime conviction did not result in injury, or included a threat rather than an act of violence, the conviction should be evaluated based upon the severity of the action or threat, the likelihood of potential harm (including whether a weapon was used), and whether there was provocation that led to the act. If the act or threat is determined to be minor, shorter time periods since conviction may be appropriate.

- The identity of the victim (whether it was a dependent individual):

A violent crime conviction is to be considered to be particularly serious if the victim was either a dependent individual (child, disabled, elderly), or would be considered to be less able to defend themselves (adult male/female). Depending on the severity of the level of violence, a violent act involving a dependent victim should be subject to longer periods of time to establish rehabilitation.

7-1733 NATURE OF CRIMES (Continued)

7-1733

- Whether a pattern of criminal behavior exists:

If the individual has more than one violent crime conviction, or there is other indication of violent behavior (arrests, licensing complaints) the maximum number of additional years should be applied. With repeated acts of violence, time periods in excess of fifteen years may be warranted before the individual could be considered rehabilitated.

- The availability of admissible evidence:

In many cases, police reports will not be available to establish the actual circumstances that led to the conviction. If a crime report is not available, the individual is expected to submit documentation from the local law enforcement agency or court jurisdiction that the report is unavailable. In some cases, the exemption analyst may need to consult with the BIRS manager to determine if additional attempts by an investigator to secure the report are warranted. If the report is determined to be unavailable, the analyst should assume that the available information regarding the circumstances of the crime (applicant statement, references) is sufficient to make a decision on the case, and should not deny the exemption based solely on the lack of a crime report.

- Any specific efforts the individual has made to ensure future violent incidents will not occur again.

In difficult cases, or if uncertain as to the appropriate decision, consult with an exemption manager prior to making a decision. County licensing agencies may also contact their Program Office County Liaison.

Certain crimes, which appear benign on their face, may have actually involved threats or presented a risk of violence to others. Assess the risk by obtaining the police reports, if available, and reviewing the underlying arrest information. Examples are crimes such as annoying phone calls, trespassing, vandalism, indecent exposure, misdemeanor burglary, violation of court order, resisting arrest, fight/offensive words, disturbing the peace, burglary 2nd degree and prostitution /solicitation.

- Carefully consider the conduct in violent arrests that are pled down to convictions for lesser offenses. If it can be determined by review of the rap sheet that the crime was originally charged as a more serious offense (possibly involving threats or violence to others), a crime report and/or available court records will be requested in order to determine the circumstances and whether the actual facts of the crime involve some component of violence. When there are other indications that the crime may have included some element of violence, it still may be necessary to order a crime report to ascertain the circumstances of the incident. In particular, crime reports should be

7-1733 NATURE OF CRIMES (Continued)**7-1733**

ordered in cases in which the individual's statement is incomplete, questionable, or inconsistent with other evidence.

- When a crime report or court document is obtained, the decision will often depend on the evidence in the report that indicates that the crime involved violence. In these cases, it may be appropriate to discuss the evidence in the crime report with the Caregiver Background Check Bureau consulting attorney. County licensing agency may contact their Program Office county liaison or consulting attorney.
- If it is determined that there is evidence of violence, the standard exemption process must always be used (Evaluator Manual Section 7-1730).
- If no indication of violence is identified, and the conviction on the rap sheet is eligible for a simplified exemption, utilize the simplified exemption process (Evaluator Manual Section 7-1720).
- If a crime report cannot readily be obtained, consult with the Background Information Review Section manager to determine if additional attempts by an investigator to secure the report are warranted. County licensing agencies are responsible for obtaining crime reports. If the report cannot be obtained, the available information regarding the circumstances of the crime (applicant statement) is sufficient. Review all information available and, if necessary, consult with an exemption manager prior to making the decision. County licensing agencies may contact their Program Office county liaison.

Branch Chief (or designee) or county equivalent approval is required to approve an exemption for:

- (1) A conviction for any crime which resulted in incarceration for 6 months or more.
- (2) Any individual who has been incarcerated in prison more than once.
- (3) A conviction for any violent misdemeanor.
- (4) A conviction for any violent felony.
- (5) A subsequent conviction for an individual who already has an exemption, if the conviction(s) for which the exemption was granted or the subsequent conviction is for a serious or violent crime, or if the convictions indicate a similar pattern of criminal behavior.

7-1733 NATURE OF CRIMES (Continued)**7-1733**

In reviewing these cases, the Branch Chief (or designee) or county equivalent will consider:

- Whether sufficient time (if the crime was a violent misdemeanor, a minimum of 15 years) has passed since completion of supervised probation or parole, or since the date of conviction if unsupervised probation,
- Whether subsequent convictions have occurred, and
- Whether there is substantial evidence of rehabilitation.

7-1734 JUDGMENT OF CONVICTION**7-1734**

A Judgment of Conviction is a document maintained by the court that documents the finding that a person is guilty or not guilty of a crime and contains information on any sentence or fine. It may also indicate the reasons why the person was not convicted.

A *certified* copy of the Judgement of Conviction must be obtained when the licensing agency receives an appeal of a denied exemption unless verification of convictions listed on the rap sheet has been obtained through a written statement by the individual.

The certified Judgement of Conviction may be obtained by requesting the document from the Office of the County Court Clerk in the county where the person was convicted. The specific county is usually noted in the agency column of the rap sheet. If the conviction occurred outside of California, attempt to identify the appropriate out-of-state agency and request a copy of the Judgement of Conviction.

A court may refuse to respond to the licensing agency's letter of request because the information on the rap sheet is so vague that it is impossible to determine in what court system the person was convicted. If unable to obtain a Judgement of Conviction and the subject does not admit to the conviction in writing, the licensing agency may obtain certified copies of disposition information by contacting the Department of Justice, Bureau of Criminal Identification and Information, Keeper of Records. The Department of Justice will provide this information if the stated purpose is for an "administrative law hearing only." **You may contact the consulting attorney** if you are unable to obtain a Judgment of Conviction for someone previously in prison.

If the Department obtains information that a conviction actually occurred during the course of an arrest investigation, the Judgement of Conviction and other supporting documentation should be attached to the Arrest-only Investigation Transmittal and returned to the analyst handling the case. Counties must process this newly discovered conviction pursuant to Evaluator Manual Section 7-1820 - Subsequent Convictions.

7-1735 DECISION CRITERIA**7-1735**

Licensing regulations outline minimum timeframes, following supervised probation or parole, that must lapse before an exemption should be approved unless the individual presents compelling evidence of rehabilitation. If an individual is eligible for an exemption after applying these regulations, the exemption analyst should also review the pattern of offenses and the timeframes between convictions. Individuals who committed a series of similar crimes must demonstrate a significant effort to change their behavior.

The regulations require the Department to review whether the individual was placed on formal or informal probation to determine the number of years that must lapse. If the individual received formal probation (usually indicated by the individual being placed under the direct supervision of a probation officer and subject to periodic checks), the number of years that must lapse starts from the end probation. If an individual received informal probation, the number of years that must lapse are counted from the date of the conviction.

In cases in which the period of supervised probation will be ending soon (within the next 3-6 months), the analyst should review other evidence of rehabilitation and should not deny based solely on the remaining period of supervised probation alone. If it is a non-violent crime, and there is evidence of rehabilitation, it is likely that the appeal will not be completed prior to the end of probation, or that the individual will be successful in the appeal. In these cases, the analyst should discuss with their supervisor whether the exemption should be approved even though the individual is still on supervised probation.

The criteria below can also be found in chart format in Evaluator Manual Section 7-1736.

If the individual's criminal history meets all of the applicable criteria specified below and the individual submits substantial and convincing evidence of good character, an exemption may be considered without Branch Chief or county equivalent approval.

Note: A violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or supervised probation. If unsupervised probation, 1 year since the date of the **last** conviction.

Any exceptions must be approved by the Branch Chief or county equivalent.

7-1735 DECISION CRITERIA (Continued)

7-1735

- (2) The individual has been convicted of two or more nonviolent misdemeanors and four years have lapsed since completing the most recent period of incarceration, supervised probation or parole. If unsupervised probation, 4 years since the date of the **last** conviction.

Any exceptions must be approved by the Branch Chief or county equivalent.

- (3) The individual has been convicted of one (1) or more violent misdemeanors and 15 years have lapsed since completing the most recent period of incarceration, supervised probation or parole. If unsupervised probation, 15 years since the date of the **last** conviction.

Any approvals for this category must be approved by the Branch Chief or county equivalent.

- (4) The individual has been convicted of one nonviolent felony and four years have lapsed since completing the most recent period of incarceration, supervised probation or parole, whichever is latest. If unsupervised probation, 4 years since the date of the **last** conviction.

Any exceptions must be approved by the Branch Chief or county equivalent.

- (5) The individual has been convicted of two or more nonviolent felonies* and ten years have lapsed since completing the most recent period of incarceration, supervised probation or parole. If unsupervised probation, 10 years since the date of the **last** conviction.

Any exceptions must be approved by the Branch Chief or county equivalent.

- (6) The individual has not been convicted of a violent felony.

Any exceptions must be approved by the Branch Chief or county equivalent.

If the individual has a combination of convictions not covered above, such as a misdemeanor/felony combination, consider the whole record. Any time there is a misdemeanor/felony combination, use the felony criteria.

7-1735 DECISION CRITERIA (Continued)

7-1735

Determining Probation Type

- Generally, individuals convicted of non-violent lesser offenses will be placed on unsupervised or informal probation, unless the rap sheet indicates otherwise. An individual on unsupervised or informal probation is not under the direct supervision of a probation officer and is not subject to periodic checks. Usually the individual must only refrain from further criminal activity and report address changes to his/her probation officer.
- If the conviction was for a felony or a violent misdemeanor, you can assume that the probation was supervised or formal, unless the rap sheet indicates otherwise. An individual on supervised or formal probation is under the direct supervision of a probation officer and is subject to periodic checks.

In cases in which the presumption is that the probation is formal or supervised, and the individual claims he/she was or is on unsupervised or informal probation, the individual must present evidence to support that claim. The individual must submit either:

- a. Acceptable court documents such as Minute Order, Orders of Judgment and Sentence, or Probation Modification Orders. The Judgment of Conviction may also indicate the probation type.

These documents will reflect either a “conditional” sentence, which indicates that the individual was placed on unsupervised or informal probation by the judge directly, or a specific designation that the probation was informal (inf) or unsupervised, which means that the probation status was determined by the probation officer.

- b. A letter from his/her probation officer indicating that they are on unsupervised or informal probation.

If there is evidence that the probation status has been changed from formal to informal, the time frames in the Criteria should be applied to the length of time since the end of formal probation.

7-1736 EXEMPTION DECISION CHART

7-1736

A <u>Non Violent Misdemeanor</u>	B <u>Violent Misdemeanor</u>	C <u>Non Violent Felony</u> Exemptions require manager review and approval.	D <u>Violent Felony</u> Exemptions may only be approved by the Branch Chief or designee or county equivalent.
<p>No more than 1</p> <p>An individual must have completed the last period of incarceration or supervised probation plus 1 year. If unsupervised probation, 1 year since date of the last conviction.</p> <p>Any exception to the time period must be approved by the Branch Chief or designee or county equivalent.</p>	<p>1 or more</p> <p>An individual must have completed the last period of incarceration or supervised probation plus 15 years. If unsupervised probation, 15 years since date of the last conviction.</p> <p>Any exception to the time period must be approved by the Branch Chief or designee or county equivalent.</p>	<p>No more than 1</p> <p>An individual must have completed the last period of incarceration or supervised probation plus 4 years, or last period of parole plus 4 years. If unsupervised probation, 4 years since date of the last conviction.</p> <p>Any exception to the time period must be approved by the Branch Chief or designee or county equivalent.</p>	<p>1 or more</p>
<p>2 or more</p> <p>An individual must have completed the last period of incarceration or supervised probation plus 4 years, or last period of parole plus 4 years. If unsupervised probation, 4 years since date of the last conviction.</p> <p>Any exception to the time period must be approved by the Branch Chief or designee or county equivalent.</p>		<p>2 or more</p> <p>An individual must have completed the last period of incarceration or supervised probation plus 10 years, or last period of parole plus 10 years. If unsupervised probation, 10 years since date of the last conviction.</p> <p>Any exception to the time period must be approved by the Branch Chief or designee or county equivalent.</p>	

If the individual has a combination of convictions not covered above, such as a misdemeanor/felony combination, consider the whole record. Any time there is a

misdemeanor/felony combination, use the felony criteria.

7-1740 NOTIFICATION OF THE EXEMPTION DECISION

7-1740

The Caregiver Background Check Bureau and county licensing agency will use the following procedures when notifying an individual of the exemption decision:

A. **Approval**

Standard – Notification of a standard **or conditional** exemption approval is sent to the licensee only. Use the appropriate Caregiver Background Check Bureau approval letter format (cbcb 4.0, 4.01, 4.1 or 4.11). **In TrustLine cases, the TL-15 letter is used.** County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

If the individual was removed/excluded from a Family Child Care Home see Evaluator Manual Section 7-1825, pending the exemption:

- complete a Family Child Care Home - Notification of Parent's Rights Addendum to Reinstate (LIC 995C)
- send a copy of the form to the licensee with the exemption approval letter.
- file a copy of the LIC 995C in the individual's exemption case file.

Individual – Notification of an *individual* exemption approval is sent to the individual only. Use the appropriate Caregiver Background Check Bureau individual approval letter format (cbcb 21). County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

Simplified – Notification of a simplified exemption approval is sent to the licensee only. Use the appropriate Caregiver Background Check Bureau approval letter format (cbcb 4.0 or 4.1). **In TrustLine cases, the TL-35 letter is used.** See Evaluator Manual Section 7-1720, Simplified Exemption. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

B. **Denial**

Standard – Notification of a standard exemption denial is sent to the licensee, the affected individual, the Regional Office and the Program Office. Use the appropriate Caregiver Background Check Bureau denial letter format (cbcb 5.1, or 5.2). The Caregiver Background Check Bureau letters contain instructions for appealing the exemption denial. (See Evaluator Manual Section 7-1760, Appeal of the Exemption Decision). **In TrustLine cases, the TL-16 or TL 36 letter is used** County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

7-1740 NOTIFICATION OF THE EXEMPTION DECISION (Continued)**7-1740**

Individual – Notification of an *individual* exemption denial is sent to the individual only. Use the Caregiver Background Check Bureau individual denial letter format (cbcb 22).

Applicant – If the Caregiver Background Check Bureau or the county licensing agency denies the exemption of an applicant, spouse or a dependent family member who will reside in the facility, the license application must be denied. The Caregiver Background Check Bureau will inform the Regional Office that is processing the license application by letter (cbcb 5.0 Unified Appeal).

The Regional Office and county licensing agency must inform the applicant of the denial using the cbcb5.0 Template Letter 1 found in the common library as a guide to draft a letter to the applicant. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within sixty (60) days. The response form tells the Caregiver Background Check Bureau if the applicant is appealing the denial. Please see Evaluator Manual, Background Check Procedures, Section 7-1760, Appeal of the Exemption Denial.

Licensee/Family Member - If the Caregiver Background Check Bureau or county licensing agency denies, cancels or rescinds the exemption of a licensee, spouse or a dependent family member, whose place of residence is the licensed facility, the license must be revoked. The Caregiver Background Check Bureau will inform the Regional Office by telephone and letter (cbcb 5.0 Unified Appeal).

The Regional Office or county licensing agency must inform the licensee of the revocation using the cbcb5.0 Template Letter 2 found in the common library as a guide to draft a letter to the licensee. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within sixty (60) days.

7-1750 RESERVED**7-1750**

7-1760 APPEAL OF THE EXEMPTION DENIAL**7-1760****License Applicant/Spouse/Dependent Family Member**

The applicant may appeal **both** the application denial **and** the exemption denial in a single, unified appeal letter to the Program Office. The appeal must include the affected individual's mailing address and telephone number. The Program Office must acknowledge the receipt of the appeal within five days.

If the application denial was based on issues other than, or in addition to, a denied exemption, the Regional Office will prepare the statement of facts. If the application denial is solely based on a denied, cancelled, or rescinded exemption, the Caregiver Background Check Bureau will prepare the statement of facts. County licensing agencies are responsible for the statement of facts in both situations. The Regional Office must send the Caregiver Background Check Bureau the appeal letter, a copy of the LIC 508 (if not previously sent) and the LIC 200. These documents must be sent with the completed Regional Office Response form within sixty (60) days of the date of the field notification letter (cbcb 5.0).

The Statement of Facts - Case Summary *and* Special Issues/Pertinent Information Sections must state that the application denial is based upon the denied criminal record exemption. The Statement of Facts must always request a licensing action and an exclusion of the individual that was denied an exemption. The Statement of Facts will be categorized by legal as an "A" case if it is a denial. The action against the dependent family member will be categorized as "B" case in conjunction with denial. See Evaluator Manual Section 1-1010, Denial of Application and Evaluator Manual Section 1-1100, The Statement of Facts.

Licensee/Spouse/Dependent Family Member

Licensees may appeal **both** the license revocation **and** the exemption denial by returning the Notice of Defense to the legal division after being served with legal documents.

If the license revocation was based on issues other than, or in addition to, a denied exemption, the Regional Office will prepare the statement of facts. If the license revocation is solely based on a denied, cancelled, or rescinded exemption, the Caregiver Background Check Bureau will prepare the statement of facts. County licensing agencies are responsible for the statement of facts in both situations.

7-1760 APPEAL OF THE EXEMPTION DENIAL (Continued)**7-1760**

The Statement of Facts - Case Summary *and* Special Issues/Pertinent Information Sections must state that the license revocation is based upon the denied criminal record exemption. The Statement of Facts must always request a licensing action and an exclusion of the individual **who** was denied an exemption. The Statement of Facts will be categorized by legal as an “A” case if it is a revocation. The action against the dependent family member will be categorized as “B” case in conjunction with revocation action. See Evaluator Manual Section 1-1010, License Revocation and Evaluator Manual Section 1-1100, The Statement of Facts.

Employee/Resident

A licensee or an applicant may appeal an exemption denial on behalf of the affected individual or an individual may appeal a denial of **an** individual exemption. The appeal must be in writing and postmarked no later than 15 days from the date of the denial letter.

The appeal must include the affected individual’s mailing address and telephone number. The licensing agency must acknowledge the receipt of the appeal within five days.

The Caregiver Background Check Bureau will prepare the statement of facts. The Statement of Facts must always request an exclusion of the individual **who** was denied an exemption. See Evaluator Manual Section 1-1010, Denial of Application and Evaluator Manual Section 1-1100, The Statement of Facts.

7-1770 EXEMPTION TRANSFERS**7-1770****The licensing agency may consider transferring an exemption if:**

1. The initial exemption was issued for Community Care Licensing Division licensed facility and the exemption is being transferred to another Community Care Licensing Division licensed facility **or,**
2. **The initial exemption was issued for the TrustLine Registry and the exemption is being transferred to Community Care Licensing Division licensed facility or vice versa and**
3. **The license applicant, licensee or TrustLine registrant submits a completed Criminal Record Exemption Transfer Form (LIC 9188) signed by the licensee, applicant or TrustLine registrant. If the facility is licensed, the LIC 9188 may be signed by an administrator or manager.**

Upon receipt of the LIC 9188, the Regional Office **or the TrustLine Registry** must forward **the form** to the Caregiver Background Check Bureau. The Caregiver Background Check Bureau will process the transfer.

7-1770 EXEMPTION TRANSFERS (Continued)

7-1770

Exemptions are automatically transferred if:

- The individual has not engaged in any criminal activity since the exemption was granted.
- There is no investigation in process by the Background Investigations Review Section.
- There have been no administrative actions taken against the individual since the exemption was granted.

Review the previous exemption case file (if available) to determine whether the individual had prior convictions that are now non-exemptible.

If the individual has convictions that are now non-exemptible, deny the transfer request (cbcb 5.3) and rescind the previous exemption (cbcb 23). If the transfer request is for an employee, the individual must be excluded from all facilities to which they are associated. If the transfer request is for a licensee, inform the Regional Office by phone and letter (cbcb 5.0). Follow instructions in Evaluator Manual Section 7-1740-B.

If the individual has arrests for any serious or non-exemptible crimes, contact the Background Information Review Section to find out the status of the arrest investigation.

- If an investigation was completed, and the individual was cleared continue processing the transfer request.
- If the arrest investigation is in progress do not approve. No action can be taken until the investigation has concluded.
- If the arrest has not been referred to the Background Information Review Section – refer case now.

If the previous file is unavailable, request a new rap sheet from Department of Justice. If Department of Justice does not provide a new rap sheet, approve the transfer without the previous file information.

If the prior exemption is conditional, determine if the conditions placed on the exemption preclude transfer of the exemption to another facility or TrustLine. If no file is available, and the conditional exemption was granted by Legal, contact them to obtain copies of any stipulations and decision and orders. If no file is available, and the conditional exemption was granted by Caregiver Background Check Bureau, request a copy of the exemption approval letter from the individual. If the individual cannot provide a copy of the approval letter, process the exemption transfer as a new exemption.

7-1770 EXEMPTION TRANSFERS (Continued)**7-1770**

Exemption transfers are not permitted between county licensing offices or between a state and a county licensing office because of the subsequent disclosure contract (rap back) arrangement with the Department of Justice. Penal Code Section 11105.2 authorizes the Department of Justice to release subsequent arrest/conviction information to the original contracting agency only.

When considering an exemption transfer to another facility that provides services to children (child care or residential) or TrustLine, the licensing agency must also review the date of the last Child Abuse Central Index check. If the last inquiry was made prior to January 1, 1999, a new inquiry must be submitted. The Licensing Information System does not contain information on any reports filed since the initial inquiry (See Evaluator Manual Section 7-1400, Child Abuse Central Index check).

An exemption granted for an individual who has a certificate of rehabilitation, as specified in Evaluator Manual Section 7-1515, can only be transferred to other facility types governed by Health and Safety Code Section 1522. This means the exemption cannot be transferred to an RCFE, RCF-CI, any child care facility or to the TrustLine Registry. For these facility types the crime for which the exemption was granted remains non-exemptible. See Evaluator Manual Section 7-1515.

7-1800 SUBSEQUENT ARRESTS AND CONVICTIONS**7-1800**

An exemption or a clearance may be revoked as a result of either a subsequent conviction or a substantiated investigation of a subsequent arrest.

7-1810 SUBSEQUENT ARRESTS**7-1810**

The licensing agency that requested the original criminal record clearance will receive a subsequent arrest report (rap back) of all subsequent arrests. The report will specify the reason for the arrest, but usually will not indicate the disposition. Therefore, the licensing office must contact the court to obtain information regarding the arrest and subsequent disposition. If no disposition has been reached, the licensing office must determine if the facts underlying the arrest justifies an administrative action. The Department of Justice will send out a follow-up rap back report after a disposition has been made.

All arrests for crimes listed in (Evaluator Manual Section 7-2100) that are investigated must be investigated consistent with Evaluator Manual Section 7-1811, Investigating Arrest-onlys. County licensing offices must also investigate Arrest-onlys consistent with this section. The licensing office must determine whether a subject will be allowed to remain in the facility after the completion of the investigation. The licensing agency cannot remove a person during the arrest-only investigation.

If, subsequent to approval of an original simplified or standard exemption, an individual receives a minor infraction or citation, or is arrested for a lesser offense, the original exemption should be reissued and a California Department of Social Services or county licensing agency clearance should not be granted. This practice is necessary to ensure that the CBC or County Licensing system continues to show a status of 'exemption approved' for the individual.

7-1811 INVESTIGATING ARRESTS-ONLY**7-1811****State Licensed Cases - Initial Inquiries**

Upon receipt of a rap sheet with arrest-only information (no convictions) the Caregiver Background Check Bureau will review the rap sheet and determine the age of each arrest.

All arrests that have occurred within the last five years will be investigated. Arrests over five years will only be referred for investigation if the arrest is for a crime that is non-exemptible (see Evaluator Manual Section 7-2100) or if the Caregiver Background Check Bureau believes that an investigation is warranted.

Arrests of any age with the following dispositions will not be referred for investigation:

- Released/Detention only/849(B) Penal Code
- Complaint Refuse Prosecution
- Diversion or Deferred Entry of Judgement Successfully Completed
- Finding of Factual Innocence
- Exonerated
- Juvenile arrest only entries in which minor was released to parent or guardian
- Acquitted or Not Guilty
- Infraction

If an investigation is warranted, the Caregiver Background Check Bureau will:

1. Check the Licensing Information System for all facility associations.
2. Contact the licensee of each facility the individual is associated with on the Licensing Information System to determine if the individual is still associated with the facility.
 - If the individual is no longer associated with any facility, disassociate the individual from the facility on the Licensing Information System and no further action is needed.
 - If the individual is still associated with a facility, send an Investigation Notification (BIRS 4 or 6) or a Confirmation Notification (BIRS 3 or 5) letter to the affected individual informing them that an investigation is being conducted.
3. Contact the court or the arresting agency in the county where the individual was arrested to determine whether a conviction occurred.
 - If a conviction has occurred, refer the case to the Caregiver Background Check Bureau's Exemption Unit.
 - If a conviction has not occurred, refer the case and related support documentation to the Bureau of Investigations for investigation via an Arrest-only Transmittal (orange form).

7-1811 INVESTIGATING ARRESTS-ONLY (Continued)**7-1811**

After the investigation has been completed, the Regional Investigation Section will return the Arrest-only Transmittal, with a copy of the investigative report, to the Caregiver Background Check Bureau (M.S. 19-57) with one of the following checked:

- A. Investigation conducted – issue clearance.
- B. No longer associated – applicant/voluntary closure.
- C. TrustLine applicant requests Voluntary Withdrawal.
- D. Regional Office to handle as **conduct inimical**.
- E. Conviction occurred (see attached supporting documentation).
- F. Other

The Caregiver Background Check Bureau will enter the result on the Licensing Information System.

State Licensed Cases - Subsequent Rap Sheets

Upon receipt of a rap sheet with arrest-only information (no convictions) the Caregiver Background Check Bureau will review the rap. Only arrests for crimes on the serious crimes list (see Evaluator Manual Section 7-2100) will be investigated. However, any arrest with the following disposition will not be investigated:

- Released/Detention only/849(B) Penal Code
- Complaint Refuse Prosecution
- Diversion or Deferred Entry of Judgement Successfully Completed
- Finding of Factual Innocence
- Exonerated
- Juvenile arrest only entries in which minor was released to parent or guardian
- Acquitted or Not Guilty
- Infraction

If an investigation is warranted, the Caregiver Background Check Bureau will:

1. Check the Licensing Information System for all facility associations and to determine if the individual has a previously granted exemption.
2. Contact the licensee of each facility with which the individual is associated on the Licensing Information System to determine if the individual is still associated with the facility.
 - If the individual is no longer associated with any facility, disassociate the individual from the facility on the Licensing Information System and no further action is needed.
 - If the individual is still associated with a facility and has a previously granted exemption, refer the case to the Caregiver Background Check Bureau Exemption Unit.

7-1811 INVESTIGATING ARRESTS-ONLY (Continued)

7-1811

- If the individual is still associated with a facility and has a clearance, continue with item 3. below.
- 3. Review the rap sheet and determine if the crime is serious or non-serious (see Evaluator Manual Section 7-2100).
- 4. Contact the court or the arresting agency in the county where the individual was arrested to determine whether a conviction occurred.
 - If a conviction has occurred, refer the case to the Caregiver Background Check Bureau's Exemption Unit.
 - If a conviction has not occurred and the crime is not serious, no action can be taken until there is a disposition.
 - If a conviction has not occurred, and the crime is serious and warrants an investigation.
 - a. Send an Investigation Notification (BIRS 4 or 6) or a Confirmation Notification (BIRS 3 or 5) letter to the affected individual informing them that an investigation is being conducted.
 - b. Refer case and related support documentation to the Bureau of Investigations for investigation via an Arrest-only Transmittal (orange form).

After the investigation has been completed, the Bureau of Investigations will return the Arrest-only Transmittal, with a copy of the investigative report, to the Caregiver Background Check Bureau (M.S. 19-57) with one of the following checked:

- A. Investigation conducted – issue clearance
- B. No longer associated – applicant/voluntary closure
- C. TrustLine applicant requests Voluntary Withdrawal
- D. District Office to handle as **conduct inimical**.
- E. Conviction occurred (see attached supporting documentation)
- F. Other

The Caregiver Background Check Bureau will enter the result on the Licensing Information System.

7-1811 INVESTIGATING ARRESTS-ONLY (Continued)**7-1811****County Licensed Facilities:**

Upon receipt of a rap sheet containing arrest only information, county licensing agencies must:

1. Review the rap sheet. Do not investigate any arrest in which you see the following disposition on the rap sheet;
 - Released/Detention only/849(B) Penal Code
 - Complaint Refuse Prosecution
 - Diversion or Deferred Entry of Judgement Successfully Completed
 - Finding of Factual Innocence
 - Exonerated
 - Juvenile arrest only entries in which minor was released to parent or guardian
 - Acquitted or Not Guilty
 - Infraction
2. Verify if the individual is still associated or employed with the facility. If the individual is no longer associated with any facility, no further action is necessary.
3. If the individual is still associated with a facility, review the rap sheet and determine if the crime is serious or non-serious (see Evaluator Manual Section 7-2100).
 - If the crime is not serious, no action can be taken until there is a disposition.
 - If the crime is serious and an investigation is warranted, send a letter to the applicant/licensee and the affected individual informing them that an investigation is being conducted (BIRS 4 or 6 or Confirmation Notification BIRS 3 or 5). County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.
4. Request and review information contained in the individual's personnel file at the facility.
5. Establish whether a conviction occurred. Contact the court or the arresting agency in the county where the individual was arrested. If the individual was convicted, process like any other conviction. Send CBCB JOC. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.
6. Obtain a copy of the arrest report and evaluate the individual's role in the crime. Individuals frequently make statements to the police that are documented in the arrest reports.

7-1811 INVESTIGATING ARRESTS-ONLY (Continued)**7-1811**

7. Contact witnesses to see if they will testify in an administrative hearing.
8. If necessary, obtain a copy of the subject's DMV record.
9. Contact other facilities with which the individual was associated.
10. Interview the individual for additional information or ask that the individual provide the disposition and arrest information.
11. Prepare a report documenting all actions and findings.
12. Document the results of your investigation. Keep notes of all contacts and telephone calls.
13. Ensure the privacy of the investigation and individual. All arrest-only investigation documents are confidential and must be kept in the confidential section of the facility folder.
14. Discuss case with Regional County Liaison for possible Administrative Action as **conduct inimical**.

7-1812 WARRANTS**7-1812**

A warrant is a legal process initiated at the municipal or superior court level. If an individual has been cited/arrested for any crime and they do not make a mandated court appearance a judge will issue a warrant for that individuals arrest.

If a warrant is issued, any law enforcement agency has the power to "execute" or serve the warrant. Before an exemption is denied for an outstanding warrant, the licensing agency must contact the agency that issued the warrant to determine if the warrant is still outstanding or valid. Do not approve an exemption if the individual has an active warrant.

The Department of Justice will attempt to obtain the adjudication of the warrant before the rap sheet is forwarded to the licensing agency however, in many instances the licensing agency will see warrant information on the initial rap sheet.

If the licensing agency becomes aware, either through a subsequent rap sheet or any other means, that the individual has an outstanding warrant and the individual has been granted an exemption.

7-1812 WARRANTS (Continued)**7-1812****The Caregiver Background Check Bureau must:**

- Contact the facility to determine if the individual is still at the facility.
- Contact the court(s) to determine if the warrant is valid, current or active or resulted in a conviction.
- Notify the Licensing Program Analyst at the Regional Office that the individual has an outstanding warrant. The analyst may take the following action:
 - ✓ Contact the law enforcement agency that issued the warrant and advise them that the Department is aware of the current work site of the individual.
 - ✓ Consult Legal for possible administrative action based on "conduct inimical".
- If the individual is a TrustLine applicant, close TrustLine case with a TL-10 letter.

County licensing agencies must:

- Contact the facility to determine if the individual is still at the facility.
- Contact the court(s) to determine if the warrant is valid, current or active or resulted in a conviction.
- Contact the law enforcement agency that issued the warrant and advise them that the licensing agency is aware of the current work site of the individual.
- Consult with the Regional County Liaison for possible administrative action based on "conduct inimical".

7-1815 IMMEDIATE REMOVAL FROM FACILITY**7-1815**

If an individual was allowed in the facility because he/she had a clearance or a criminal record exemption and subsequently we receive a rap sheet containing a conviction, the licensing agency must determine if the affected individual can continue to be present in the facility while the exemption request is evaluated.

Statute requires that all individuals convicted of a non-exemptible crime, be immediately removed from the facility (See Evaluator Manual Section 7-2100). Individuals convicted of a non-exemptible crime, and the licensee of the facility they are associated with, must be sent a letter informing them that the individual's conviction is non-exemptible (cbcb 6.1). County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

7-1815 IMMEDIATE REMOVAL FROM FACILITY (Continued)**7-1815**

Individuals convicted of any crime listed below or a felony that is exemptible, must be removed pending an exemption decision. These individuals, and the licensee of the facility they are associated with must be sent a letter informing them that the individual must be removed and that an exemption must be obtained before the individual can return to the licensed facility (cbcb 3 and 3.1). County licensing agencies must also complete and send a Confirmation of Removal Notice (LIC 300E) with the cbcb 3 or 3.1. See Evaluator Manual Section 7-1820 for variations if the individual is a licensee, spouse or dependent adult who resides in the facility. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

Removals are not limited to persons with convictions for non-exemptible crimes or convictions for crimes listed below. An individual with a misdemeanor who poses a risk to clients because of the seriousness, recency, and/or pattern of the crime may be removed from the facility pending an exemption decision. Removals do not have to be limited to crimes against a person and/or physical harm. Fiduciary crimes may also warrant removal depending upon such factors as facility type; recency; pattern, etc.

(See Evaluator Manual Section 7-1510 for Non-exemptible Convictions, and Evaluator Manual Section 7-1740 Notification of the Exemption Decision).

If an individual is employed by a facility that is part of a larger compound, the individual can only be removed from the portion of the compound that is licensed by Community Care Licensing Division or placed in other employment that would not require that the person have a background clearance.

7-1815 IMMEDIATE REMOVAL FROM FACILITY (Continued)**7-1815**

In addition to individuals convicted of felonies and the misdemeanors listed in Health and Safety Code §1522, 1568.08, 1569.17, and 1596.871, individuals (employees, residents) associated to any community care facility shall be immediately removed if he/she has been convicted of one of the following violent misdemeanors:

Type of Crime	Penal Code Section
Battery	242 through 243.9
Shooting at Inhabited Dwelling	246
Degrading, immoral, or vicious practices or habitual drunkenness in presence of children	273g
Corporal Injury on Spouse/Cohabitant	273.5
Discharging firearm with Gross Negligence	246.3
Exhibiting Weapon/Firearm	417
Threat to commit a crime resulting In Great Bodily Injury or Death	422
Criminal Threat to Harm or Injure Another person	71, 76
Cruelty to Animals	597
Willful Harm or Injury to Child (Includes all unlawful corporal punishment and other crimes where immediate exclusion not already required. Victim must be a child.)	For example, 273.6(b) or (e), 273.65(b), 309, 310.2, 11414. This list is not exhaustive and requires a case by case analysis of the code section listed on the RAP sheet.

Removals for convictions other than those identified above must be approved by an Exemption Unit Manager. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION**7-1820**

The following procedures must be followed in situations where Caregiver Background Check Bureau or the county licensing office receives criminal history information after the individual has already received a clearance or a criminal record exemption.

Non-exemptible Conviction – Licensee/Spouse/Dependent Family Member

If a licensee has been convicted of a non-exemptible crime the license must be revoked. If spouse or dependent family member has been convicted of a non-exemptible crime, and the facility is the spouse or dependant family member's place of residence, the license must be revoked.

The Caregiver Background Check Bureau Responsibilities:

- Send the field notification letter (cbcb 6.0), and Regional Office response form to the Regional Office.
- Be available to consult with legal and the Regional Office regarding a Temporary Suspension Order.

The Regional Office Responsibilities:

- Consult with legal and the Program Office regarding a Temporary Suspension Order or an expedited revocation.

Because the conviction is for a non-exemptible offense, the case must always be referred for a Temporary Suspension Order or an expedited revocation. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed.

In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the individual is determined to present a risk to clients, a Temporary Suspension Order will be initiated. However, if it is determined that the individual does not present a risk to clients, the licensing office may consider using an expedited revocation as discussed below.

If it is decided by the Regional Manager and attorney not to proceed with a Temporary Suspension Order, the Program Manager will consult with the Program Office Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820**

- Send the licensee a letter informing them that the Department has received a rap sheet containing a non-exemptible conviction and that the license has been referred to the legal division for revocation (use cbc 6.0 Template Letter 2 found in the common library).
- Complete and return the Regional Office response form to the Caregiver Background Check Bureau within ten (10) days of the date of the field notification letter (cbcb 6.0).
- If the revocation is based solely on the non-exemptible conviction, send the Caregiver Background Check Bureau a copy of the LIC 200, LIC 508 (if not previously sent) and the license with the Regional Office response form.

In addition, for Family Child Care Homes, which usually operate only for a portion of the day, if the decision is made not to proceed with a Temporary Suspension Order, the individual will be required to be removed from the home during all hours that children are present.

If the decision is to require that the spouse or dependent adult be removed from the home during the hours that children are in care, the Regional Office will send a letter to the licensee. The letter will indicate that because of their criminal conviction, the individual must be out of the home during the hours that children are in care and that the license has been referred to the Legal Division for revocation. (Use FCCH Template 1 – Non-exemption found in the common library). A copy of the letter will be sent to Caregiver Background Check Bureau attached to the CBCB 6.0 form.

The County Responsibilities:

- Contact the licensee and inform them that the County has received a rap sheet containing a non-exemptible conviction.
- Upon receipt of the rap sheet or no later than 7 days, consult the Program County Liaison who will consult legal for a Temporary Suspension Order or an expedited revocation.

Because the conviction is for a non-exemptible offense, the case must always be referred for a Temporary Suspension Order or an expedited revocation. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820**

In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the individual is determined to present a risk to clients, a Temporary Suspension Order will be initiated. However, if it is determined that the individual does not present a risk to clients, the county licensing office may consider using an expedited revocation as discussed below.

If it is decided by the Program Manager or delegate, the consulting attorney and county liaison not to proceed with a Temporary Suspension Order, the Program Manager or delegate will consult with the Program Office Administrator (or delegate) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

For Family Child Care Homes, which usually operate only for a portion of the day, if the decision is made not to proceed with a Temporary Suspension Order, the individual will be required to be removed from the home during all hours that children are present.

If the decision is to require that the spouse or dependent adult be removed from the home during the hours that children are in care, the county licensing office will send a letter to the licensee. The letter will indicate that because of their criminal conviction, the individual must be out of the home during the hours that children are in care and that the license has been referred to the legal division for revocation (use FCCH template 1 – non-exemptible). County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

- Send Confirmation of Removal Notice (LIC 300E) to the licensee with the CBCB 6.1 letter.

Non-exemptible Conviction – Employee/Resident**The Caregiver Background Check Bureau Responsibilities:**

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the individual was convicted of a non-exemptible conviction and must be immediately removed from the facility.
- Send separate and concurrent follow-up letters (cbcb 6.1) to the licensee and the individual specifying the above.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820**

- In addition, if the facility is a Family Child Care Home,
 - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)
 - ✓ send a copy of the form to the licensee with the cbc 6.1 letter.
 - ✓ file a copy of the LIC 995B in the individual's criminal background file
 - ✓ send a copy of the LIC 995B and the cbc 6.1 letter to the Regional Office.

The Regional Office Responsibilities:

- Consult legal for a possible Temporary Suspension Order if the individual is not removed from the facility.

The County Responsibilities:

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the individual was convicted of a non-exemptible crime and must be immediately removed from the facility.
- Send separate and concurrent follow-up letters (cbc 6.1) to the licensee and the individual specifying the above. County licensing agencies see Evaluator Manual 7-1000 for letter modification instructions.
- In addition, if the facility is a Family Child Care Home,
 - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B).
 - ✓ send a copy of the form to the licensee with the removal letter.
 - ✓ file a copy of the LIC 995B in the individual's criminal background file.
- Consult the Program County Liaison who will consult legal for possible Temporary Suspension Order if the individual is not removed from the facility.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820****Exemptible Felony/Serious Misdemeanor – Licensee/Spouse/Dependent Family Member****The Caregiver Background Check Bureau Responsibilities:**

- Send the field notification letter and Regional Office response form (field notification 2.2) to the Regional Office.
- If applicable, process the exemption request.
- Be available to consult with Legal and the Regional Office, whether to issue a Temporary Suspension Order to allow the facility to remain open while the licensee seeks an exemption.

The Regional Office Responsibilities:

- Consult with legal and the Program Office regarding a Temporary Suspension Order or an expedited revocation.

For felonies and misdemeanors that require immediate removal, the Regional Manager and the consulting attorney will discuss and determine whether the case should be referred for a Temporary Suspension Order or revocation or whether a decision on legal action should be postponed until Caregiver Background Check Bureau has processed the exemption request.

If the conviction is for a non-violent felony, the Regional Manager and the consulting attorney will discuss and determine whether the case should be referred for a revocation, or whether a decision on legal action should be postponed until Caregiver Background Check Bureau has processed the exemption request. The Regional Manager and attorney should consider whether the individual is likely to obtain an exemption in making their assessment.

For some convictions, it may be necessary to obtain a police report and evaluate the underlying facts of the crime prior to making a decision as to the action to be taken.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820**

For any crime involving violence or a crime against children or dependent adults, if it is decided by the Regional Manager and attorney not to proceed with a Temporary Suspension Order, the Regional Manager will consult with the Program Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

If the decision is to seek revocation, the individual will be allowed to remain in the facility pending action on the expedited revocation. In these cases, an exemption is not processed by Caregiver Background Check Bureau and the individual receives their appeal rights through the revocation process.

If the decision is to postpone action until a decision is made on the exemption, the individual will also be allowed to remain in the facility pending action on the exemption.

As the individual has a legal right to reside in the facility, no removal (except as noted below) of the individual will be initiated in either case.

In addition, for Family Child Care Homes, which usually operate only for a portion of the day, if the decision is made not to proceed with a Temporary Suspension Order, the individual will be required to be removed from the home during all hours that children are present.

If the decision is to require that the spouse or dependent adult be removed from the home during the hours that children are in care, the Regional Office will send a letter to the licensee. The letter will indicate that because of their criminal conviction, the individual must be out of the home during the hours that children are in care, and that they will receive a letter from Caregiver Background Check Bureau advising them of the requirements for requesting an exemption – (Use FCCH Template 2 – Felony/Serious Misdemeanor found in the common library).

A copy of the letter will be sent to Caregiver Background Check Bureau attached to the CBCB 2.2 form. Caregiver Background Check Bureau will initiate their 45-day period for submission of the exemption request from the date of the Regional Office letter.

- Respond to the Caregiver Background Check Bureau, via the field notification response form, within five (5) working days.
- Contact the licensee and inform them that the Department has received a rap sheet with a felony/serious misdemeanor conviction. Type of contact, either by phone or in person, is up to the discretion of the Regional Office.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820****The County Responsibilities:**

- Contact the licensee by telephone informing the licensee that the County has received a rap sheet containing a felony/serious misdemeanor conviction.
- Decide, in consultation with the Program County Liaison, whether to issue a Temporary Suspension Order or allow the facility to remain open while the licensee seeks an exemption.

For felonies and misdemeanors that require immediate removal, the Program Manager or delegate, consulting attorney and county liaison will discuss and determine whether the case should be referred for a Temporary Suspension Order or revocation or whether a decision on legal action should be postponed until the county licensing office has processed the exemption request.

If the conviction is for a non-violent felony, the Program Manager or delegate, consulting attorney and county liaison will discuss and determine whether the case should be referred for a revocation, or whether a decision on legal action should be postponed until the county licensing office has processed the exemption request. The Program Manager or delegate, consulting attorney and county liaison should consider whether the individual is likely to obtain an exemption in making their assessment.

For some convictions, it may be necessary to obtain a police report and evaluate the underlying facts of the crime prior to making a decision as to the action to be taken.

For any crime involving violence or a crime against children or dependent adults, if it is decided by the Program Manager or delegate, the consulting attorney and county liaison not to proceed with a Temporary Suspension Order, the Program Manager will consult with the Program Administrator (or delegate) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

If the decision is to seek revocation, the individual will be allowed to remain in the facility pending action on the expedited revocation. In these cases, an exemption is not processed by the county licensing office and the individual receives their appeal rights through the revocation process.

If the decision is to postpone action until a decision is made on the exemption, the individual will also be allowed to remain in the facility pending action on the exemption.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820**

As the individual has a legal right to reside in the facility, no removal (except as noted below) of the individual will be initiated in either case.

In addition, for Family Child Care Homes, which usually operate only for a portion of the day, if the decision is made not to proceed with a Temporary Suspension Order, the individual will be required to be removed from the home during all hours that children are present.

If the decision is to require that the spouse or dependent adult be removed from the home during the hours that children are in care, the county licensing office will send a letter to the licensee. The letter will indicate that because of their criminal conviction, the individual must be out of the home during the hours that children are in care, and that a criminal record exemption request may be submitted to the county licensing office. (Use FCCH County Template 2 – Felony Serious Misdemeanor)

Exemptible Felony/Serious Misdemeanor – Employee/Resident**The Caregiver Background Check Bureau Responsibilities:**

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the individual was convicted of a felony/serious misdemeanor and must be immediately removed from the facility until an exemption is granted.
- Send separate and concurrent follow-up letters (cbcb 3 or 3.1) to the licensee and the individual specifying the above.
- In addition, if the facility is a Family Child Care Home,
 - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)
 - ✓ send a copy of the form to the licensee with the cbcb 3 or 3.1 letter.
 - ✓ file a copy of the LIC 995B in the individual's criminal background file
 - ✓ send a copy of the LIC 995B and the cbcb 3 or 3.1 letter to the Regional Office.
- If applicable, process the exemption request.

7-1820 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION (Continued)**7-1820****The Regional Office Responsibilities:**

- Consult legal for a possible Temporary Suspension Order if the individual is not removed from the facility.

The County Responsibilities:

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the individual was convicted of a felony/serious misdemeanor crime and must be immediately removed from the facility.
- Send separate and concurrent follow-up letters (cbcb 3 or 3.1) to the licensee and the individual specifying the above. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.
- Send confirmation of Removal Notice (LIC 300E) to the licensee with the CBCB 3 or 3.1 letter.
- In addition, if the facility is a Family Child Care Home,
 - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)
 - ✓ send a copy of the form to the licensee with the cbcb 3 or 3.1 letter.
 - ✓ file a copy of the LIC 995B in the individual's criminal background file
- Consult the Program County Liaison who will consult legal for possible Temporary Suspension Order if the individual is not removed from the facility.

Other Exemptible Offenses

If the conviction is not a non-exemptible offense, the licensing agency must inform the licensee and the individual in separate and concurrent letters (cbcb 2.1) that an exemption is required. It is not necessary to remove an individual convicted of a misdemeanor, except for those listed in Evaluator Manual Section 7-1815, however, it is necessary to issue a letter specifying that an exemption is required. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

**7-1830 NO LONGER INTERESTED IN SUBSEQUENT ARREST
OR CONVICTION INFORMATION****7-1830**

The Department of Justice will continue to send the licensing agency subsequent arrest and conviction information unless otherwise notified. If the Caregiver Background Check Bureau receives a rap sheet and the individual's status on LIS is Active-Not Working (not associated to any facility), the Caregiver Background Check Bureau will change the individual's status to No Longer Interested and notify the Department of Justice.

Similarly, if a county licensing office determines that the subject is no longer associated with the facility it must indicate this on the rap sheet and return the rap sheet to the Department of Justice.

7-1900 ADMINISTRATIVE ACTIONS**7-1900**

The following is a list of actions which may be considered by the licensing agency in response to a criminal history report (initial or subsequent) or upon verification of a conviction for a licensee/spouse, applicant/spouse or employee. The type of action taken should be based upon the potential harm to the clients and the severity of the conviction. Please see Evaluator Manual Section 1-1000 through 1-1450 for expanded descriptions and information on the enforcement actions listed below.

I. Applicant/Spouse/Dependent Family Member**a. Injunctive Relief**

This process results in the immediate closure of a facility operating without a license. An injunction order is obtained from the Superior Court.

b. License Application Denial

If the person with a non-exemptible conviction or a denied exemption is an applicant, the license application will be denied.

7-1900 ADMINISTRATIVE ACTIONS (Continued)**7-1900****II. Licensee/Spouse/Dependent Family Member for Subsequent Conviction Information****a. Temporary Suspension Order**

A Temporary Suspension Order results in the immediate closure of a facility by temporarily suspending all operations. A Temporary Suspension Order must be approved by the Community Care Licensing Division Deputy Director and becomes effective upon service.

b. License Revocation

A license may be revoked when an exemption is denied or rescinded. The revocation does not become effective until the action is approved and adopted following a formal decision to revoke the license, such as after an administrative hearing or through Stipulation.

III. Employee or other Adult with Client Contact**a. Employee Exclusion**

An employee exclusion is based on a denied exemption. If an exemption request has been denied and the employee is still working in the facility or still has contact with clients in care, the employee must be excluded from the facility. All exclusions must be approved by Legal.

NOTE: Do not confuse an employee exclusion with an Immediate Facility Removal Section 7-1600. An Immediate Facility Removal is not an Administrative Action because no final decision has been made as to the exemption request.

Licensure by both State and County

The California Department of Social Services has a contractual relationship with several counties to provide licensing services. Counties under this agreement are responsible for issuing Foster Family Home and/or Family Child Care Home licenses. The Community Care Licensing Division has this responsibility in other non-contracted counties. This situation creates the possibility of an individual having both a county and a State license.

The possibility of this dual licensing requires special coordination between the county and State. Once the county licensing agency has made a decision to deny or revoke a criminal record exemption the county licensing agency must contact their Program Office County Liaison to inform them of the intended action. The Program Office County Liaison will check for the existence of a license issued by Community Care Licensing Division. If dual licensing exists, the Program Office County Liaison will notify the appropriate Regional Office of the pending action.

7-2000 MAINTENANCE OF CRIMINAL RECORD INFORMATION**7-2000**

Approved exemptions and support documentation must be retained for three years and archived for an additional three years (standard file retention rules) after the individual is no longer associated with the facility. Counties must retain exemption information in the facility file the individual is associated with. Licensing Regional Offices must retain all exemption information sent from the Caregiver Background Check Bureau in the facility file the individual is associated with.

Denied exemptions and support documentation must be retained indefinitely.

Approved individual exemptions must be maintained as active for two years after the individual is no longer associated with the facility. The licensing agency may associate the holder of an approved individual exemption to licensed facility during this period. The licensing agency must use the criteria and procedure for transferring an approved exemption (See Evaluator Manual Section 7-1770, Exemption Transfers).

7-2010 CONFIDENTIALITY OF CRIMINAL HISTORY INFORMATION**7-2010**

Penal Code Section 11505(b)(9) provides that the Department of Justice may provide criminal history information to Community Care Licensing Division for licensure because of the criminal clearance requirements in Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871. Penal Code Section 11142 prohibits the licensing agency from furnishing such information to an agency not authorized by law to receive it. Penal Code Section 11505(b)(11) authorizes the licensing office to share specific criminal history information with the subject but *not* with the individual's employer or co-applicant or co-licensee, even if that person is the individual's spouse. Licensees and co-applicants, etc. can only be told that:

- The individual has a criminal history.
- That the offense is exemptible or non-exemptible.
- Whether the individual may remain in the facility or must be immediately excluded.

These confidentiality laws do not apply to the sharing of an exemption decision, which do not list criminal history or public records such as a Judgement of Conviction or criminal complaints which were obtained during the exemption process.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS

7-2100

NON-EXEMPTIBLE CRIMES¹**September 9, 2004****(1) Penal Code section 136. 1 with 186.22 —Felony Intimidation of Witnesses and Victims/ Gang Related**

- Added at Penal Code, § 667.5(c)(20) by Proposition 21 effective 3-8-2000
- Must be a felony conviction for threats to victims or witnesses, as defined in PC 136.1, with a sentencing enhancement under Penal Code section 186.22(b) (gang related) or a felony conviction for Penal Code section 186.22(a) (gang related). Review of court records may be necessary to determine enhancement (gang-related conduct)

(2) Penal Code sections 187, 190-190.4 and 192(a) — Any Murder/ Attempted Murder/Voluntary Manslaughter

- Specified at Penal Code, § 667.5(c)(1) and (c)(12)
- This is not an exhaustive list of code sections under which Murder, Attempted Murder, or Voluntary Manslaughter could be charged.
- CBCB is advised to consult legal if conviction is for a similarly titled state crime committed outside of California or a federal crime.
- Exemption may be granted to individuals convicted of Murder or Voluntary Manslaughter if rehabilitated pursuant to Health & Safety Code section 1522(g)(1)(A)(ii) ². Note that this exception is only in section 1522 and only applies to those covered under section 1522.

¹ Juveniles and young adults sentenced to CYA may be released from such disabilities under Welfare & Inst. Code Sections 1179 and/or 1772. CBCB is advised to consult CBCB legal team if this issue arises.

² An exemption may be granted for the following violent felonies specified at Penal Code, § 667.5(c) (1) Murder, Voluntary Manslaughter; (2) Mayhem; (7) any felony punishable by death or life in prison, and (8) any felony which inflicts great bodily injury) any felony in which the individual inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the individual uses a firearm which use has been charged and proved in Section 12022.5 or 12022.55, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(3) Penal Code section 203 — Any Mayhem**

- Specified at Penal Code, § 667.5(c)(2)
- This is not an exhaustive list of code sections under which this crime can be charged.
- CBCB is advised to consult legal if conviction is from out of state for a similarly titled crime.
- Exemption may be granted for licensure or employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code section 1522(g)(1)(A)(ii)

(4) Penal Code section 206 — Torture

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871
- Must be a felony conviction

(5) Penal Code sections 207, 208, 209, 209.5 — Kidnapping

- Specified in its entirety without qualification at Penal Code, § 667.5(c) (14) as a result of Proposition 21, effective 3-8-2000
- A conviction for the attempt to commit 207 or 209 is non-exemptible.³

(6) Penal Code section 211, 212, 212.5, 213, 214 — Any Robbery

- Specified in its entirety without qualification at Penal Code, § 667.5(c)(9) as a result of Proposition 21, effective 3-8-2000. Notwithstanding the above, if an individual has been convicted of second degree robbery and has obtained a certificate of rehabilitation, they are eligible for an exemption pursuant to a Court Order issued in Glesmann v. DSS dated July 21, 2004. This exception only applies to those seeking exemptions for facilities covered under Section 1522 of the Health and Safety Code.

³ A conviction for the attempt to commit any crime specified at Penal Code, § 290(a)(2)(A) is non-exemptible.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(7) Penal Code section 215 — Carjacking**

- Section in its entirety without need for deadly weapon charge added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.
- Specified at Penal Code, § 667.5(c)(17) by Proposition 21 which also removes need for weapon charge effective 3-8-2000

(8) Penal Code section 220 — Assault with intent to commit mayhem, rape, sodomy or oral copulation, etc.

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, Penal Code, § 290(a)(2)(A) and added at Penal Code, § 667.5(c)(15) pursuant to Proposition 21, effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible except for attempted Assault with intent to commit Mayhem which is excluded at Penal Code, § 290(a)(2)(A)

(9) Penal Code section 243.4 — Sexual Battery

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, and Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(10) Penal Code section 261(a)(1)(2)(3)(4) or (6) — Rape

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible

(11) Penal Code section 262(a)(1) or (4) Rape of Spouse

- Specified at Penal Code, § 667.5(c)(3)
- Penal Code, § 262(a)(1) is specified at Penal Code, § 290(a)(2)(A), which requires use of violence or force for which person was sentenced to state prison

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)

- A conviction for the attempt to commit a violation of Penal Code, § 262(a)(1) is non-exemptible. CBCB is advised to consult CBCB legal team.

(12) Penal Code section 264.1 — Rape in concert

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, and at Penal Code, sections 290(a)(2)(A), and 667.5(c)(18) by Prop 21 effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible

(13) Penal Code section 266 — Enticing minor into prostitution

- Specified at Penal Code, § 290(a)(2)(A) including all Penal Code, § 266 sections below. Therefore, a conviction for the attempt to commit any of the Penal Code, § 266 violations listed below is non-exemptible.

(14) Penal Code section 266c — Induce to sexual intercourse, etc. by fear or consent through fraud**(15) Penal Code section 266h(b) — Pimping a minor****(16) Penal Code section 266i(b) — Pandering a minor****(17) Penal Code section 266j — Providing a minor under 16 for lewd or lascivious act****(18) Penal Code section 267 — Abduction for prostitution**

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(19) Penal Code section 269 — Aggravated assault of a child

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(20) Penal Code section 272 — Contributing to delinquency of a minor**

- Specified at Penal Code, § 290(a)(2)(A)
- Must involve lewd or lascivious conduct
- A conviction for the attempt to commit this crime is non-exemptible

(21) Penal Code section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] — Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871
- Conviction of Penal Code, § 273a before 1-1-65 is exemptible

(22) Penal Code section 273d — Willfully inflicting any cruel or inhuman corporal punishment or injury on a child

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871
- “Spousal abuse” deleted by 1977 amendment
- If conviction is in 1977 or before then it must be for child abuse and not spousal abuse

(23) Penal Code section 285 — Incest

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(24) Penal Code section 286 — Sodomy**

- Specified at Penal Code, § 290(a)(2)(A) and “By force” at Penal Code, § 667.5(c)(4)
- Note: need not be “By force” to be non-exemptible per Penal Code, § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible
- Rewritten by 1975 amendment which removed the far-reaching “Infamous crime against nature” language. Prior to amendment the section could be read to prohibit the act between consenting adults. Penal Code, § 290(a)(2)(A)(F)(i) sets forth procedure by which an individual can establish such acts were decriminalized by 1975 or 1976 legislation. CBCB is advised to consult CBCB legal team if conviction is on or before 1-1-76.

(25) Penal Code section 288 — Lewd or lascivious act upon a child under 14

- Specified at Penal Code, § 290(a)(2)(A), Penal Code, §667.5(c)(6), and Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.871
- A conviction for the attempt to commit this crime is non-exemptible

(26) Penal Code section 288a — Oral copulation

- Specified at Penal Code, § 290(a)(2)(A) and “By Force” at Penal Code, § 667.5(c)(5)
- Note: need not be “By force” to be non-exemptible per Penal Code, § 290(a)(2)(A)
- Rewritten by 1975 amendment, which removed far-reaching language. Prior to this amendment the section could be read to prohibit the act between consenting adults. Penal Code, § 290(a)(2)(A)(F)(i) sets forth procedure by which an individual can establish such acts were decriminalized by 1975 or 1976 legislation. CBCB is advised consult CBCB legal team if the conviction is on or before 1-1-76.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(27) Penal Code section 288.2 — Distributing lewd material to children**

- Specified at Penal Code, § 290(a)(2)(A) by amendment effective 1-1-90
- Must be a felony conviction
- A conviction for the attempt to commit this crime is non-exemptible
- CBCB is advised to consult CBCB legal team if conviction before 1-1-90

(28) Penal Code section 288.5 — Continuous sexual abuse of a child.

- Specified at Penal Code, § 290(a)(2)(A) by amendment effective 1-1-90 and at Penal Code, § 667.5(c)(16) by amendment effective 1-1-92
- A conviction for the attempt to commit this crime is non-exemptible

(29) Penal Code section 289 — Genital or anal penetration by foreign object

Penal. Code, § 289 is specified at Penal Code, § 290(a)(2)(A) and Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.971

- A conviction for the attempt to commit this crime is non-exemptible
- 1993-94 amendment repealed former Penal Code, § 289.5—relating to punishment for rape or sodomy whether penetration by foreign object or penis-- and included it in Penal Code, § 289. CBCB is advised to consult legal if conviction is for Penal Code, § 289.5

(30) Offenses listed at Penal Code section 290(a)(2)(A) — Registration of sex offenders (All such offenses are included in this list)

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)

- If person is noted on the Rap sheet as required to register as a sex offender and the conviction for which registration is required is not listed on the Rap sheet then contact DOJ Sex Registration Unit ASAP to get crime. It is the crime listed at 290(a)(2)(A) which is non-exemptible, not the requirement to register. Nevertheless, CBCB is advised to consult legal if the underlying crime is exemptible (not listed at 290(a)(2)(A)) but the individual was ordered by court to register as a sex offender anyway. (See Penal Code, § 290(a)(2)(E))
- Penal Code sections 288.2 and 288.5 added to list of offenses requiring registration by amendment effective 1-1-90

(31) Penal Code section 311.1— Sent or brought into state for Possession, or distribution: child-related pornography

- Added by amendment to Penal Code, § 290(a)(2)(A), effective 1-1-04
- A conviction for the attempt to commit this crime is non-exemptible

(32) Penal Code section 311.2(b)(c) or (d) — Sending or bringing into state, Possessing for distribution: child-related pornography

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(33) Penal Code section 311.3 — Sexual exploitation of a child

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(34) Penal Code section 311.4 — Using a minor to assist in making or distributing child pornography

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(35) Penal Code section 311.10 — Advertising or distributing child pornography**

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible)

(36) Penal Code section 311.11 — Possessing child pornography

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(37) Penal Code section 314(1) or (2) — Lewd or obscene exposure of private parts

- Specified at Penal Code, § 290(a)(2)(A). This crime is non-exemptible unless the court expressly orders that the person does **not** have to register as a sex offender.
- A conviction for the attempt to commit this crime is non-exemptible.

(38) Penal Code section 347(a) — Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871
- Must be a felony conviction

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(39) Penal Code section 368 — Elder or dependent adult abuse**

- SB 1992, effective 1-1-2001, specifies Penal Code, § 368 in its entirety.
- Formerly Penal Code, § 368(a) or (b) if prior to 1-1-99, and (b) or (c) thereafter as specified at Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.871

(40) Penal Code section 417(b) — Drawing, Exhibiting, or Using Firearm or Deadly Weapon on the grounds of a day care center

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code sections 1522, 1569.17 and 1596.871
- Must be a felony conviction

(41) Penal Code section 451(a)(b) — Arson

- As specified at Penal Code, § 667.5(c)(10)
- Subdivision (b) added at Penal Code, § 667.5(c)(10) by Prop 21 effective 3-8-2000
- A felony violation of Penal Code, § 451(a) is also be specified at Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871 as a result of SB 1992, effective 1-1-2001

(42) Penal Code section 460(a) — First Degree Burglary where person other than culprit or accomplice is present

- Added by Proposition 21, effective 3-8-2000, at Penal Code, § 667.5(c)(21)
- Must be charged and proved that another person, other than accomplice, was present in the residence during the commission of the burglary

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(43) Penal Code sections 518 with 186.22— Extortion/gang related**

- Added by Proposition 21, effective 3-8-2000, at Penal Code, § 667.5(19)
- Must be a felony conviction for extortion, as defined in Penal Code section 518, with a sentencing enhancement under Penal Code section 186.22(b) (gang related) or a felony conviction for Penal Code section 186.22(a) (gang related). Review of court records may be necessary to determine enhancement (gang-related conduct)

(44) Penal Code section 647.6 or prior to 1987 former section 647a — Annoy, molest child under 18

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(45) Penal Code section 653f(c) — Solicit another to commit rape, sodomy etc.

- Specified at Penal Code, § 290(a)(2)(A)
- CBCB is advised to consult CBCB legal team if conviction under 653f(c) prior to 1-1-80
- A conviction for the attempt to commit this crime is non-exemptible

(46) Penal Code section 664/187 — Any Attempted Murder

- Specified at Penal Code, § 667.5(c)(12)
- CBCB is advised to consult CBCB legal team if conviction is from out of state for similar crime.

(47) Penal Code section 667.5(c)(7) ⁴ Any Felony punishable by death or imprisonment in the state prison for life without possibility of parole but not for an indeterminate sentence.

- An example of an indeterminate sentence is “5 years to life” or “life in prison with possibility of parole”.
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code section 1522(g)(1)(A)(ii) if the underlying felony can be exempted.

⁴ If any Penal Code, § 667.5(c) entry appears on Rap sheet alone without any other Penal Code, section violation then CBCB is advised to contact legal.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)**(48) Penal Code section 667.5(c)(8) — Enhancement for any felony which inflicts great bodily injury**

- On or after 7-1-77, felony must have been charged and proved as provided for in Penal Code, §§ 12022.7 or 12022.9. Prior to 7-1-77, as specified in Penal Code, §§ 213, 264, and 461 or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Penal Code, §§ 12022.5 or 12022.55
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code section 1522(g)(1)(A)(ii) if the underlying felony can be exempted

(49) Penal Code sections 12308, 12309, 12310 — exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder

- All specified at Penal Code, § 667.5(c)(13). Penal Code, §§ 12309 and 12310 added by Proposition 21 effective 3-8-2000

(50) Penal Code section 12022.53 —Enhanced sentence for listed felonies where Use of Firearm

- Specified at 667.5(c)(22) by Proposition 21, effective 3-8-2000
- Underlying conviction must be for a felony listed in Pen Code, 12022.53
- Some subsections of PC 261 and 262 are exemptible

(51) Penal Code section 11418(b) or (c)— Weapons of Mass Destruction

- Added by amendment effective 9-17-02, at Penal Code, § 667.5(c)(23)

(52) Business and Professions Code section 729 — Sexual Exploitation by Physicians, Surgeons, Psychotherapists, or Alcohol and Drug abuse Counselors

- Must be felony conviction
- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS
(Continued)**7-2100****Serious Arrest-only(s) Requiring Investigation**

As required by Senate Bill 1984, all Arrest-onlys on this list must be investigated consistent with the Arrest-only Investigation Procedures.

187	Murder
192(a)	Voluntary Manslaughter
203, 205	Mayhem and Aggravated Mayhem
207(b), 208(b)	Inducing a child under the age of 14 to go to another part of the same country for purpose of committing a lewd and lascivious act upon the child-kidnapping.
211 with 12022(b)	Robbery of an inhabited house, vessel, trailer coach, or building with use of a dangerous weapon. (Rap sheets do not always reflect 211 Penal Code Section with 12022).
215(a) with 12022(b)	Car jacking with the use of a dangerous weapon.
220	Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with foreign object.
243.4	Sexual Battery
245	Assault with a deadly weapon (all)
261(a), (1), (2), (3), (4), or (6)	Rape by force, violence, duress, menace, fear or threat of retaliation.
262(a)(1) or (4)	Rape of spouse by force, violence, duress, menace, fear or threat of retaliation.
264.1	Rape or penetration of genital or anal opening by foreign object by force or violence, either personally or in concert with another. Acting in concert with another, by force or violence to commit rape or penetration of genital or anal opening with a foreign object.
266	Enticement of unmarried female under the age of 18 for purposes of prostitution.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)

266c	Inducing another to engage in sexual intercourse, penetration of genital or anal opening by foreign object, oral copulation or sodomy by consent procured by false or fraudulent representation with intent to create fear.
266j	Procurement of a child under the age of 16 for lewd or lascivious acts.
267	Abduction of a person under the age of 18 for purpose of prostitution.
272	Contributing of the delinquency of a person under the age of 18 by an offense involving lewd and lascivious conduct.
273a(a)	Willful harm or injury to a child under circumstances likely to cause great bodily harm or death.
273a(1)	Same as above.
273d	Willful infliction on a child of cruel or inhumane corporal punishment or injury resulting in a traumatic condition.
273.5	Willful infliction of corporal punishment on co-habitant resulting in a traumatic condition.
285	Incest
286	Sodomy
286(c) or (d)	Sodomy by force, violence, duress, menace or fear of bodily injury.
288	Lewd and lascivious acts with a child under the age of 14 years.
288a	Oral copulation
288a(c) or (d)(1)	Oral copulation by force, violence, duress, menace or fear of injury.
288.2	Any felony conviction of sending harmful sexual material to a minor with intent of seducing the minor.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS 7-2100
(Continued)

288.5	Continued sexual abuse of a child.
289	Penetration of genital or anal opening by foreign object by force, violence, duress, menace or fear of injury.
311.2(b), (c) or (d)	Sale, possession or distribution of material depicting a child under the age of 18 engaging in or simulating sexual conduct.
311.3	Sexual exploitation of a child by developing, filming, or photographing sexual conduct by a child under the age of 18.
311.4	Employment or use of minor to perform prohibited acts.
311.10	Advertising for sale or distribution of obscene matter depicting a child under the age of 18 engaged in or simulating sexual conduct.
311.11	Possession or control of material depicting minor engaged in or simulating sexual conduct.
314 (1) or (2)	Indecent exposure.
368(a) or (b)	Willful infliction of pain or suffering to elder or dependent adults.
451(a)	Arson of a structure, forest land or property causing great bodily injury.
647(d)	Loitering in or about any public toilet for the purpose of engaging in or soliciting and lewd, lascivious or unlawful acts.
647.6 or formerly 647a	Annoying or molesting a child under the age of 18.
667.5(c)	Violent felonies.
12022.5	Sentence enhancement for the use of a firearm in a commission or attempted commission of a felony.
12022.55	Sentence enhancement for inflicting great bodily injury by discharging a firearm from a motor vehicle in the commission of a felony.
12022.7	Sentence enhancement for the infliction of great bodily injury.

7-2100 CRIMINAL RECORD PROCESS REFERENCE DOCUMENTS
(Continued)**7-2100**

12308 Exploding, igniting or attempting to explode a destructive device with intent to murder.

- Any felony punishable by death or life imprisonment.
- Any attempted commission of one of the above crimes.
- Any conviction under federal or military law or the law of another state court which if committed in California would have been punishable as an offense of the sex crimes list.
- Any person determined to be a mentally disordered sex offender under Welfare & Institution Code Section 6300 et seq., prior to January 1, 1981.

7-2200 LIST OF FREQUENTLY USED ACRONYMS**7-2200**

BIRS	Background Information Review Section	FCC	Family Child Care (previously Family Day Care)
BOI	Bureau of Investigations (formerly known as RIS Regional Investigation Services and Program Investigation Unit)	RO	Regional Office of CCLD (formerly known as DO District Office)
CACI	Child Abuse Central Index	FCCH	Family Child Care Home
CCF	Community Care Facility	FBI	Federal Bureau of Investigation
CCL	Community Care Licensing (same as CCLD)	FFA	Foster Family Agency
CCLD	Community Care Licensing Division	H & S	Health and Safety Code
CDSS	California Department of Social Services	JOC	Judgment of Conviction
CLETS	California Law Enforcement Telecommunications System	LIS	Licensing Information System
CRC	Criminal Record Clearance	LPA	Licensing Program Analyst
CBCB	Caregiver Background Check Bureau	PC	Penal Code
DOJ	Department of Justice	TSO	Temporary Suspension Order